M. TULLI CICERONIS

PRO A. CLUENTIO ORATIO

Classical Series.

M. TULLI CICERONIS

PRO A. CLUENTIO ORATIO

EDITED WITH INTRODUCTION AND NOTES
EXPLANATORY AND CRITICAL

BY

W. PETERSON, M.A., EDIN. AND OXON.
HONORARY LL.D. ST. ANDREWS AND PRINCETON
PRINCIPAL OF McGILL UNIVERSITY, MONTREAL

London
MACMILLAN AND CO., LIMITED
NEW YORK: THE MACMILLAN COMPANY
1899

GLASGOW: PRINTED AT THE UNIVERSITY PRESS BY
ROBERT MACLEHOSE AND CO.

PREFACE.

On the publication, in 1895, of my revised translation of the *Pro Cluentio*, the suggestion was made by more than one kindly critic that, in view of the new matter presented in the introduction and notes, I ought to undertake an edition of the speech itself. Not long afterwards an invitation to prepare the present volume reached me from the publishers.

Apologies are due for the delay which has taken place since the book was announced. I may be allowed to plead in excuse a somewhat extensive change of domicile, and the absorbing engagements of a new office.

The only scruple I felt in undertaking the task which is now completed was lest my work should appear to come into competition with the admirable edition of Mr. W. Y. Faussett. And in specifying my obligations to Mr. Faussett's book, I do not forget what all students of the *Pro Cluentio* owe to the late Professor Ramsay.

But my text will be found to have been constituted on independent lines. I have carefully reviewed the evidence of the manuscripts, and the considerations

which have led me to adopt a more or less eclectic method in deciding between the two rival traditions are fully set forth in the Introduction. For the benefit of critics who may proceed at once to search for new matter, it may be sufficient here to refer to the suggestion of "index words," of which I cannot but think that *queritur se ab Oppianico destitutum* in the traditional text of § 73 is a sufficiently obvious example. The emendations introduced at §§ 83, 98, 103, 107, 113, 173, 192, and 195 may also claim attention. As to the commentary, I hope that—while my obligations to my predecessors will be obvious to all who are familiar with the speech—I may have succeeded in eliminating some of the residuary difficulties of interpretation.

For the critical apparatus I have relied mainly on Baiter and Faussett, citing only such variations in the MSS. as appeared to be of importance for a scientific study of the text.

W. P.

MONTREAL, *March*, 1899.

CONTENTS.

INTRODUCTION.

The speech in defence of Cluentius was delivered in B.C. 66, the year in which Cicero filled the office of praetor (§ 147). He was then in the prime of life (aet. 41), and at the very height of his reputation as a pleader: it will be remembered that this was the year in which he delivered his famous oration in support of the Manilian Law.

The accusation was brought under the *Lex Cornelia de Sicariis et Veneficis*, and the trial was held before the *Quaestio*, or standing commission, established by Sulla to deal with cases arising under that statute. The presiding judge (*iudex quaestionis*) was Q. Voconius Naso (§§ 147-8). The jury was composed, under the *Lex Aurelia* (B.C. 70), of senators, knights, and *tribuni aerarii.*

The defendant, Aulus Cluentius Habitus of Larinum, was impeached by Oppianicus the younger, stepson and son-in-law of Sassia, the mother of Cluentius. The direct charge was that the accused had procured by poison the death of Oppianicus the elder, as well as of two other persons; but the prosecution relied also on the prevailing belief that, at the trial of Oppianicus the elder eight years before (B.C. 74), Cluentius had employed corrupt means to secure his step-father's conviction. The prosecution was conducted by T. Accius, a Roman knight of Pisaurum, in Umbria: Cicero alone appeared for the defence (§ 199).

Such are the elements which go to compose the drama that is enacted in the speech before us—a speech which, apart from the interest that attaches to it as a revelation of the conditions of social life in ancient Italy, will always hold a foremost place in oratorical literature as representing the high-water mark of Ciceronian eloquence.

The Story Unfolded in Cicero's Speech.

A. Cluentius Habitus,[1] the defendant, had lost his father in the year B.C. 88, when he was a boy of fifteen. His sister Cluentia married her cousin, A. Aurius Melinus; and the first stage in the rupture between Cluentius and his mother was brought about by the circumstances which destroyed this marriage. Sassia, falling in love with her son-in-law, induced him to divorce Cluentia, and marry her instead.

Here enters the villain of the piece, Oppianicus the elder, who eventually succeeded Aurius Melinus as Sassia's (third) husband, and thus became the step-father of Cluentius.

Melinus had a kinsman, M. Aurius, who was murdered, and Oppianicus became suspected of having been concerned in his death (§ 23). The previous record of Oppianicus was a bad one. His first wife had been a Cluentia, a sister of Cluentius the elder, and an aunt

[1] Lambinus substituted *Avitus* for *Habitus*, and the form thus introduced was adopted by all editors, till Classen, following Niebuhr (*Rh. Mus.* i. 3, p. 223), restored the reading of the MSS. *Avitus* is another name altogether (*Tac. Ann.* xiii. 54). There was a L. Cluentius who opposed Sulla in the S. of Italy during the Social War: cp. Verg. *Aen.* v. 122, *Cloanthus—genus unde tibi Romane Cluenti*, where the poet's intention is to glorify the *gens Cluentia* by tracing its origin to one of the companions of Aeneas.

of Cicero's client: of her he was said to have rid himself by poison (§ 30). Then he murdered his own brother, after having cleared the way for succeeding to his estate by taking the life of his wife Auria, together with that of her unborn child (§ 31). His second wife was Magia, the daughter of a rich widow of Larinum named Dinaea: she died, after giving birth to a son who lived to be the prosecutor in the present action (§ 21). Next Oppianicus seems to have married Papia (§ 27), who is probably identical with the woman (a sister-in-law of Magia's) whose unnatural guilt is recorded in § 34, without any mention of her name. His subsequent conduct seems to have been motived by the desire to secure for her grandson, the younger Oppianicus, the entire succession to Dinaea's property: it is her only surviving son, M. Aurius, whom Oppianicus is now suspected of having put out of the way,—shortly after Dinaea herself had been removed by Clodius, a travelling quack whom he had in his pay (§ 40). But he is threatened with a prosecution, and has to fly from Larinum. Joining Sulla's party, on that general's return from the East, he gets himself installed as one of the chief magistrates of Larinum, and in that capacity procures the execution of all who had made themselves obnoxious to him, including, among others, Aurius Melinus, the husband of Sassia (§ 25).

Oppianicus is now free to pay his court to the rich widow. He had divorced his third wife, Papia, whom he had married under the discreditable circumstances referred to above; and, in some manner not specified in Cicero's narrative, he had rid himself also of a fourth wife, Novia, who had lately borne him a son (*filius infans*, § 28). Sassia, for her part, was by no means inconsolable over the loss of her husband, Melinus; she only objected that her new suitor was burdened with three children. Novia's infant child, and another boy

whom Papia was bringing up in retirement at Teanum, are promptly disposed of, and with this proof of affection Sassia would seem to have been content, as the eldest son of Oppianicus, who bore his name, survived, as has been said, to institute proceedings against Cluentius. The fact that he was now heir to the whole family property of his grandmother, Dinaea, was probably a sufficient reason for not including him in the list of victims (§§ 27-8).

This recital of the crimes of Oppianicus is presented by Cicero with the obvious view of predisposing the jury to believe that he was quite capable of having attempted, as was alleged, the life of Cluentius. It is, in fact, the so called *probabile ex vita* (§§ 10-42)—the argument in proof of a man's guilt, drawn from his known life and character. Oppianicus had had five wives: the first he poisoned, two he seems to have divorced, one died a natural death, and the fifth was Sassia. Reference may be made to § 125 for a general summary of his career of crime: from the indictment contained in that section it will appear that he was charged with having murdered, or at least procured the murder of, no fewer than eleven persons—his first wife, his brother, a brother-in-law, two of his own sons, a cousin, his mother-in-law, besides Asuvius of Larinum (§ 36), and three of his fellow-citizens (§ 25). He had, moreover, according to Cicero, forged a will and bribed a jury.

It may be that all the counts in Cicero's impeachment of Oppianicus could not have been substantiated if the dead man had been present to answer for himself. Certainly it should be noted that, while the orator evidently wishes to produce the impression that Oppianicus had practised wife-murder on a large scale (§§ 52, 125), the death of his first wife Cluentia is the only case he actually cites. And we may well ask how, if Oppianicus had really been guilty of so many enormities,

he had never been brought to trial till Cluentius raised his action against him. The anarchy which attended Sulla's triumph (§ 25) may have afforded him a protection against the exposure of some of his misdeeds; but the murder of his first wife Cluentia (§ 30), as also that of his brother, C. Oppianicus, and of his brother's wife (§ 31), was anterior to that date, and ought to have been enough in themselves to bring him to justice. There was also the charge of having made away with two of his own children in order to clear the way for his marriage with Sassia (§ 27); and lastly, there was the alleged assassination of Asuvius (§ 36), which threatened indeed to come to light, but was in some mysterious fashion covered up and put out of sight.

Cicero has certainly not scrupled to paint the picture in the darkest possible colours. But making every allowance for rhetorical exaggeration and for the desire to whitewash, as it were, the defendant at the expense of the prosecutor's father (§ 10), there can be no doubt that Oppianicus was a man of the worst character. And when we remember that he was represented at the present trial by his widow, Sassia, "uxor generi, noverca filii, filiae pelex" (§ 199), we may well echo Mommsen's judgment: "the criminal statistics of all times and countries will hardly furnish a parallel to the dreadful picture of crimes—so varied, so horrible, and so unnatural—which this trial unfolds to us."

The averment of the prosecution was that it was Cluentius who had procured the death of Oppianicus (as well as of two other persons) by poison.

It was certain that there had been enmity between the two. The quarrel as to the status of the Martiales (§ 43), and his stepfather's interest in the succession to the estate of Cluentius (§ 44), are put forward by Cicero as the

motive for the crime for which Oppianicus had been condemned eight years before (cp. p. xxi.). This is the *probabile ex causa* (§§ 43-45), to which Cicero appends a narrative of the method by which Oppianicus (according to his story) sought to carry out his evil design. He addressed himself to a certain C. Fabricius, through whom overtures were made to the slave of the physician who happened at the time to be in attendance on Cluentius. Poison was to be given the patient instead of medicine. But the slave communicated the design to his master, and a trap was set by which Scamander, a freedman of Fabricius, was surprised at a secret interview with Diogenes, the slave in question, to whom he was in the act of paying a sum of money to procure poisoning (§ 47). Scamander was tried and convicted, as also was Fabricius. Finally Cluentius prosecuted Oppianicus also before the same court which had convicted the other two. At Scamander's trial, one juror had voted for acquittal—Staienus, a needy and disreputable senator; and it was to him accordingly that Oppianicus applied, placing a large sum of money in his hands to bribe the bench and secure his acquittal. Cicero's account of what happened at this trial must, like the Scamander story, form the subject of a separate investigation, as constituting one of the main difficulties of the narrative: meanwhile it may be stated here that Oppianicus was found guilty, but only by a narrow majority (§ 76).

The defence of Oppianicus had been conducted by the tribune, Quinctius, who now declared that Cluentius had bribed the court. He put himself at the head of a wider agitation, which aimed at the suppression of the senatorial juries and the restoration of its privileges to the equestrian order. A series of proceedings was instituted which proved fatal to quite a number of those who had assisted in procuring the

conviction of Oppianicus. C. Junius, the *iudex quaestionis*, was impeached on technical grounds and found guilty (§§ 79, 89). Several of the jurors were prosecuted on various charges, though in every case it was their alleged corruption at the trial of Oppianicus that influenced the jury to bring in an adverse verdict. One only (Fidiculanius Falcula) was directly impeached, and in his case a double trial resulted in acquittal (§§ 103-4). The censors affixed their official stigma to the names of certain jurors who were understood to have acted from corrupt motives (§ 117); and finally the senate passed a formal resolution denouncing, in a comprehensive way, the conduct of any who might have been guilty of bribery at a criminal trial (§ 136).

The death of Oppianicus took place about two years after his trial, *i.e.*, in the year B.C. 72. Sassia attempted at the time to extort from certain slaves under torture some declaration that would compromise her son, but altogether without success. Three years afterwards one of these slaves, Strato by name, committed theft and murder in her house, and she seized the opportunity of putting him again to the torture. This time she professed to have obtained some sort of evidence incriminating Cluentius; and it was on the strength of this evidence that she persuaded the younger Oppianicus to institute the present proceedings.

It is probable that Cluentius was acquitted, as the result of Cicero's able advocacy. He may have been altogether innocent of the death of his step-father, though we shall find reason to discount some of the arguments which his advocate adduces in his favour. Cicero represents Oppianicus as living a life so wretched (§ 175) that no one who bore him any ill-will would have wished to release him from his misery. But from some of the incidents of the narrative we might be inclined to

infer that the convict was by no means so badly off as Cicero makes out. In particular, we may note that his own and Sassia's friends, who are described as *homines honesti atque omnibus rebus ornati* (§ 176), interested themselves in investigating the circumstances of his decease. The facts of the death of Oppianicus, as referred to by Cicero, seem open to doubt: it will not escape a critical reader, for instance, that while seeking to disprove the genuineness of the alleged depositions of Strato and Nicostratus, he nowhere definitely states what those depositions were.

The two minor charges of poisoning alleged against Cluentius need not detain us. The first Cicero refutes on the evidence of the senator Plaetorius, with whom the alleged victim, Vibius Cappadox, was staying at the time of his death (§ 165). In reply to the second, he brings forward the father of the young Balbutius, who was said to have met his death by accidentally swallowing a poisoned draught which Cluentius was alleged to have prepared for Oppianicus the younger (§§ 166-168). This last may, perhaps, be considered the only satisfactory piece of evidence in the whole speech. For the rest, Cicero seems to have had ample reason for his boast, as reported by Quintilian: *se tenebras offudisse iudicibus in causa Cluenti gloriatus est*, *Inst.* ii. 17. 21.

The Scamander Incident.

The conviction of Scamander, the freedman of the Fabricii, formed one of the *praeiudicia* or 'previous decisions' recorded against Oppianicus, on which Cicero largely relied for the success of his present defence. When Scamander was prosecuted for having been a party to the alleged attempt on the life of Cluentius, Cicero had appeared on his behalf; and one of his main difficulties in defending Cluentius now was that he had

previously committed himself to a quite different version of the facts and circumstances involved in the case. P. Cannutius, the counsel for the prosecution at the trial of Scamander, is represented (§ 52) as having proved more than a match for Cicero. As the guilt or innocence of Oppianicus turns greatly on the incident in which Scamander figures, and as that incident has generally been misrepresented by commentators, it may be worth while to re-state it here.[1]

What Cicero now wishes his hearers to believe is that Oppianicus, having conceived the design of removing Cluentius by poison, employed as his agent Fabricius, who, in turn, had recourse to the services of his freedman Scamander. The latter approached Diogenes, the slave of the physician who was at the time in attendance on Cluentius. The text makes it quite clear that it was of the essence of the plot that Diogenes was to administer the poison: cp. §§ 47, 55, 61, 62. This he brings with him to the interview described in § 47, as clearly appears from certain words used subsequently, *constitutum inter eos ... ut medicamentum, non venenum Diogenes adferret*, § 53. Scamander, on the other hand, brings a packet of money (*pecunia obsignata*)—sealed, possibly, with the seal of his master, Fabricius. This was, according to Cicero, the money consideration to be handed to Diogenes for the commission of the crime. When the *viri boni* emerged from their concealment, this packet was certainly found on Scamander's person. Ramsay remarks that the money without the poison would have proved nothing; and other commentators explain the words of § 47, *pecunia obsignata quae ob eam rem dabatur*, as meaning that Scamander was in the act of handing Diogenes the money, and Diogenes in the act of giving Scamander the poison. But we have seen

[1] For a fuller discussion, see my *Translation*, pp. xxv.-xxxi.

that it was Diogenes who was to administer the drug, and we must therefore suppose that he was either handling it himself or allowing Scamander to handle it at the precise moment when the friends intervened. They certainly waited till they saw enough to convince them that Scamander knew what he was paying his money for. In connection with the poison brought by Diogenes, the packet found on Scamander could point only to one conclusion.

It may be an example of the way in which Cicero sought, in defending Cluentius, to 'throw dust in the eyes of the jury,' that the terms which he employs in describing this incident vary in different places. At first he says—on the reading of ST in § 47[1]—that it was the money-bribe that was found on Scamander: then immediately afterwards he speaks as if it were the poison that Scamander was caught with,—*cuius in manibus venenum deprehenderat* § 49, cp. *venenum esse deprehensum*, and *manifesta veneni deprehensione* § 50, as well as § 20 *cum manifesto venenum deprehendisset.* Lastly, in § 53, he permits himself to use a phrase implying that Scamander had both the money and the poison about him when he was caught, *cum veneno pecuniaque deprehensum.*

The defence which Cicero had put forward on the occasion of Scamander's trial was that it was medicine, not poison, that Diogenes had brought to the rendezvous (§ 53). This could never have been suggested, with any hope of acceptance, if there had been any allegation that it was Scamander who had brought the poison: cp. the use of *quaesitum* in §§ 55 and 62. Moreover, the words *venenum diebus paucis comparatur* (§ 47) must be held as implying that it was Diogenes and his friends who got ready the drug; the action of *comparatur* is

[1] *venenum ... comparatur ... pecunia obsignata ... deprehenditur.*

the same as that of *emitur* in the sentence immediately preceding. Cicero's attempt to whitewash Scamander at the previous trial had altogether failed. Only one juror, the notorious Staienus, could be got to accept the suggestion that it was a harmless drug that Diogenes brought with him (as from his reputed master, the doctor Cleophantus, though he had now passed by purchase into the hands of Cluentius, § 47); and that he had been suborned to bring a poison instead, in order that his new master might be in a position to raise a false charge against Scamander, and indirectly against Oppianicus. If Scamander was really innocent, and if the poison was being "planted on" him (to use a colloquial term) by Diogenes, why should he have compromised himself, the prosecutor asked, by repairing to a secret rendezvous, and by bringing a sum of money in a sealed packet? (§ 53).

Combining the account of the line of defence which Cicero represents himself as having adopted at the trial of Scamander (§ 52) with the argument he advances at the present trial, we cannot help noting that the whole story turns on the testimony of Diogenes, and that there is some *prima facie* ground for the suggestion that the plot may have been got up by Cluentius himself. Diogenes was, after all, only a slave, and could easily have been influenced by his new master to say just what he was wanted to say. The untrustworthiness of the testimony of a slave is quite a common-place in Cicero's speeches, and the impropriety of taking evidence against an accused person from the slave of his accuser is specially illustrated in the *pro Milone* (§§ 59, 60).[1] The narrative of the text does not sufficiently disclose the real object

[1] Cp. the subsequent enactment, *ad quaestionem non esse provocandos eos quos accusator de domo sua produxit*, Ulpian, *Dig.* xlviii. 1, 3.

with which Cluentius purchased Diogenes from his doctor, Cleophantus (§ 47); it seems hardly enough to say that the motive of the transference was *quo facilius aut comprehenderetur res eius indicio, aut falsa esse cognosceretur.* If Diogenes was a liar, the change of ownership would have left him a liar still. The statement that Fabricius had sought to corrupt Diogenes (§ 47), and that the money found on Scamander was the consideration which Diogenes was to receive for poisoning Cluentius, rested ultimately on the bare word of a slave. The only corroborative evidence which Cicero specifies in support of his new version of the story is the deposition of M. Baebius, and this he takes as matter of common knowledge: *qui qua fide, qua prudentia, qua diligentia fuerit meminisse vos arbitror*, § 47.

The verdict brought in against Scamander, and also that recorded against Fabricius soon afterwards, are regarded by Cicero as constituting *praeiudicia*, or previous decisions, 'prejudicing' the case of Oppianicus, with the circumstances of whose trial we have next to deal. It is an axiom with the orator that the guilt of Oppianicus is involved in the conviction of those whom he represents as having acted as his agents: cp. *hoc venenum Oppianici* § 62. But it should be noted that the cases were not conducted on parallel lines. The impeachment of Scamander and Fabricius was limited exclusively to the charge of poisoning (§ 62), and on that count they were all but unanimously condemned—Scamander with one dissentient, and Fabricius by a unanimous verdict. In the case of Oppianicus many other charges were included in the indictment (cp. § 19, § 20, *pauca . . . crimina*, and § 59); and his conviction was secured by only the narrowest possible majority. The composition of the majority vote that condemned him must form the next subject of our inquiry; mean-

while it is important to recall the fact that Cicero does not venture to impugn the good faith of the five jurors who, apart from those who said *Non Liquet*, pronounced for the acquittal of the defendant. At first sight it would certainly appear to be possible to infer that Oppianicus was not really implicated in the alleged attempt at poisoning, and that the jury accordingly declined the invitation to connect him with its previous decisions in the cases of Scamander and Fabricius. The conviction of Oppianicus may, in fact, have been due to some of the other counts in the indictment preferred against him.

The Trial of Oppianicus before Junius.

(*Iudicium Iunianum*).

The following is the account which, in the speech before us, Cicero gives of the circumstances of this trial. Oppianicus felt that his case was hopeless, in view of the judgments previously recorded against Scamander and Fabricius. Having decided to endeavour to influence the jury, he approached Staienus, who was known to have given the solitary vote in favour of Scamander; and, finding Staienus a willing instrument, he placed in his hands the sum of 640,000 sesterces (about £5440) with which to bribe sixteen members of the bench, whose votes, together with his own, would secure a majority of the whole thirty-two. Staienus made promises to certain venal jurors, but secretly determined to keep all the money to himself, calculating that the conviction of Oppianicus would save him from all risk of being called to account for his intromissions. So he pretends that Oppianicus has played him false, and will not pay; and he advises his venal colleagues that the best thing they could do would be to follow his example and vote for a conviction.

The lot decreed that Staienus and two of his friends should be the first to record their verdicts; and as there was a general suspicion that they had been bribed in favour of the defendant, the surprise was great when all three voted for a conviction. Some bewildered jurymen began to believe that it must have been Cluentius who had had recourse to bribery. The result was that, while a considerable number held the charge 'not proven,' five actually voted for acquittal; and it was only by a narrow majority that Oppianicus was declared guilty.

How are we to account for the fact that the verdict against Oppianicus was not unanimous, like that against Fabricius, or all but unanimous, like that against Scamander? His alleged attempt to bribe the bench of jurors had entirely failed: no one got any money from him except Staienus, and even Staienus was forced eventually to disgorge (§ 78). Those jurors whom Staienus had deluded with the promise of a bribe all voted against his patron as soon as they found that the money was not forthcoming. They returned what was, according to Cicero, the right verdict, but they did so from pique and disappointment. Surely if Oppianicus was so notoriously guilty, the jurors who had not been approached by Staienus (some of them, presumably, honourable men), would have given an adverse judgment instead of either refusing to commit themselves or siding with the minority.

The method by which Cicero endeavours to account for the character and composition of the verdict is obviously another instance of 'throwing dust in the eyes of the jury.' His statement of the case is introduced by a glaring sophism. Just as in the *pro Milone* he argues that, either Milo waylaid Clodius with intent to murder him, or Clodius waylaid Milo, so in the speech before us he assumes that, as bribery had undoubtedly been practised,

it must have been practised either by Cluentius or else by Oppianicus (§ 64). But all the evidence points to an alternative supposition, viz. that both were guilty, and that Cluentius overbribed his rival. This theory derives additional support from a passage in the *Verrines*, in which the orator distinctly states that Staienus had taken a bribe from both prosecutor and defendant: *inventus est senator qui, cum iudex esset, in eodem iudicio et ab reo pecuniam acciperet quam iudicibus divideret et ab accusatore ut reum condemnarent*, *Verr.* i., § 39.

Except so far as it may be indicated in a phrase which Cicero lets drop in the course of his narrative,[1] the fact that the issue turned on a single vote is nowhere distinctly stated in the text. But there is a passage in the *pro Caecina* which makes this a certainty : *cum si uno minus damnarent condemnari reus non posset* (§ 29). The transference of a single vote, that is to say, would have resulted in a tie—16 to 16 ; and this would have involved another hearing (*ampliatio*). The majority in favour of a conviction was therefore 17 to 15.[2]

The proper interpretation of § 107 is an important factor in determining this result. Nine names are there enumerated, and these have been taken by some commentators (as, for example, Professor Ramsay) to be the names of jurors who voted "Guilty." But this view is not supported by the context. We know from indications in other parts of the speech that eight jurors who gave a hostile verdict were suspected of having been influenced by bribery—Staienus, Bulbus, Gutta, Popilius, Falcula, Aquilius, Scaevola, and

[1] This may be a fair interpretation of the words used in § 78 *Staieni sententia condemnatum videbant.*

[2] Cp. § 74, where it appears that 16 votes were needed for acquittal, in addition to that of Staienus.

Egnatius. If the nine honourable men whose names are recited in § 107 had concurred in this verdict, Cicero would have claimed them as witnesses against Oppianicus in more emphatic language than he actually uses in the section under discussion.[1] Moreover, he professes to be merely selecting certain names from a number at his disposal, whereas (on Ramsay's theory) he could really not have added a single one more. Nine are mentioned in all, and 9+8=17. The fact seems to be that in § 106 he begins to divide the bench into two classes—those who acquitted, and those who did not acquit; and the names mentioned in § 107 are the names of nine of those who voted *Non Liquet.* To make up the minority of 15 we must suppose that there was a tenth juror who gave this verdict, and whose name is omitted from the list. The only possible alternative would be to suppose that, with the view of vindicating the justice of the verdict, Cicero is quoting in § 107 a certain number of reputable names from the list both of those who gave a direct verdict of "Guilty," and of those who voted "Not Proven"; but this seems hardly so probable.

The conduct of Staienus is another matter in regard to which the orator's statements are hardly convincing. He receives a large sum of money, amounting to 640,000 sesterces (about £5,440), for distribution among sixteen jurors: his own vote was regarded as certain, as he had already voted for the acquittal of Scamander, and fully expected to be rewarded also on the present occasion (*spe maiorum praemiorum*, § 74). This money Cicero represents Staienus as having schemed to keep entirely to himself, though he was subsequently forced to disgorge the whole of it (§ 78).

[1] *Non absolvit—ne is quidem absolvit—quorum nullius sententia est Oppianicus absolutus—in eadem sententia fuit*, § 107.

It is not improbable that Staienus was over-bribed by Cluentius. The theory that he had an understanding with the prosecution would readily explain his absence from court when the jury was about to retire in order to consider their verdict. Without him the majority would have been 16 to 15, and therefore he could have been spared, especially considering that he was now expected to turn his back on his previous performance in acquitting Scamander; but Quinctius, acting in the interests of Oppianicus, and probably ignorant that the other side had annexed him, insisted on having Staienus brought back to court before the final vote was taken.

The acquittal of Fidiculanius Falcula, on the other hand (§ 91 and § 103), is a strong point in favour of the defence which Cicero sets up in the speech before us. It was charged against Falcula that he had been given a seat on the jury at the last moment, and that in empanelling him Junius had acted in collusion with the praetor Verres. He was twice brought to trial—the second time on the direct charge of having taken a bribe to vote against Oppianicus; and on both occasions he was acquitted. But Cicero cannot have had much belief in his innocence, if we may judge from the *pro Caecina*, § 29: *Utrum gravius aliquid in quemquam dici potest quam ad hominem condemnandum quem nunquam vidisset neque audisset adductum esse pretio?* Cp. notes on § 104.

Accepting Cicero's narrative only so far as it helps to point to a probable theory, we may suggest the following as an approximately true version of what actually happened. Oppianicus gave Staienus money to make certain of sixteen votes, which, along with his own, would ensure an acquittal. Some at least of the thirty-two jurors were men of character, and above

bribery (cp. *nummarii pauci*, § 75), and in order to convert a possible minority of 15 into a majority Cluentius had to over-bribe at least some of those who had already pledged themselves to Oppianicus, *e.g.*, Bulbus, Gutta, and Staienus himself. The irregular *subsortitio* of Falcula (§ 103) secured for Cluentius one vote which may have been doubtful before; and—in order, possibly, to divert suspicion—it was arranged that Staienus, whose vote was no longer indispensable, should stay away. Quinctius, however, insisted on his being brought back into court, and the result was a verdict of *Guilty* by 17 votes (instead of 16) against 15.

The account of the interview Oppianicus had with Staienus after his conviction (§ 78), and a reference to certain disclosures which the condemned man is alleged to have made,[1] render it probable that, without trying to save his own character, Oppianicus sought to show that Cluentius was fully as guilty as himself. Staienus had tricked him, but he would take care that the truth should be known. The closeness of the division may have resulted from the eager efforts made on both sides. Cluentius won—by a single vote, that of Staienus: *Staieni sententia condemnatum videbant*, § 78.

The issue was certainly by no means so conclusive as it had been in the previous cases of Scamander and Fabricius. When Cicero appeared for the former, eight years before, he had taken, as we have already seen, an entirely different view of the case. From more than one passage in his speeches, statements can be cited which are quite irreconcilable with his present position: *e.g.* 2 *Verr.* ii., §§ 78-9, where he illustrates the conduct charged against Verres by the double treachery of Staienus (cp. i., § 39); 1 *Verr.* § 29, where he refers to the corruption of the "Iunianum consilium": *Ib.* §§ 38, 39, where, in citing

[1] § 69, *quemadmodum ex ipso Oppianico postea est auditum.*

cases of senatorial corruption, he alludes to the *litis aestimatio* at the trial of Scaevola as a proof that bribery had been practised against Oppianicus: 2 *Verr.* i., § 157, where he accuses Verres of having falsified the entries in his official register, in order to conceal his connivance at the crime of Junius (*quod falsum codicem protuleris*). Again in the *pro Caecina*, §§ 28, 29, he dwells on the informality of which Falcula had been guilty (for the purpose of disparaging him as a witness), in language very different from that which he uses in his speech before us. The accusation of inconsistency which had evidently been levelled against him on the ground of such utterances as these, he endeavours to rebut by various arguments, especially in § 139: just as he tries to demolish the weight of the *praeiudicia* against his client by showing that they were due to the *invidia* which then prevailed. There can be little doubt that this change of attitude is partly attributable to the altered position of the equestrian order. The *Lex Sempronia iudiciaria* of C. Gracchus (B.C. 122) had transferred to the Equites from the Senate the coveted privilege of serving as jurors in the law courts; and the monopoly thus created continued to be enjoyed by the knights down to the period of Sulla's legislation. The only attempts to interfere with it were the *Lex Servilia* of B.C. 106 (cp. § 140), which provided for associating the Senate with the Equites, but which did not continue long in operation; a similar motion brought forward by the tribune L. Drusus, in B.C. 91 (see on § 153); and the *Lex Plautia* of B.C. 89, which proposed that each of the thirty-five tribes should furnish fifteen persons of any standing whatever. It was only in B.C. 81 that a *Lex Cornelia* again transferred the *iudicia* to the Senate. But the corruption which marked the senatorial *régime*, and which is represented as having culminated in the trial before Junius, led to the agitation of which we

hear so much in the present speech, and which was headed by Oppianicus's counsel, the tribune Quinctius.[1] He raised a series of actions against the jurors who had taken bribes at the late trial, and also set in motion against them the machinery of the censorial stigma. Cicero makes much of the fact that in most cases their alleged conduct at the trial of Oppianicus was not made the main charge against these offenders. Possibly there may have been a motive for this. The senatorial juries which tried the cases could not have convicted on a direct charge of bribery without discrediting their own order. But they had to yield to the inevitable. The feeling of resentment over the exclusive privileges of the senators was so strong that it was easy to secure a conviction on any charge which it might be convenient to put in the foreground in dealing with each particular case. Thus it is said of Junius himself, *idcirco illis legibus condemnatus est quod contra aliam legem commiserat* (§ 92). Similarly Bulbus, on his trial for *maiestas*, is at the same time accused of having taken a bribe at the trial of Oppianicus (§ 97); and Staienus, when also on his trial for *maiestas*, had to face the argument which the Cominii founded on his conduct as one of the jury in that case (§ 99; cp. § 114).

Cicero's attitude in connection with the impeachment of Verres shows us that he shared in the popular resentment against the senatorial administration; see especially i. *Verr.*, § 38, ii. 4, § 133. There is, indeed, a passage in the present speech in which he sets it in a fairer light: *tum vero illa iudicia senatoria non falsa invidia, sed vera atque insigni turpitudine notata atque operta dedecore et infamia, defensioni locum nullum reliquisent*, § 61. But this may have been because he felt that it was his interest to uphold the character of the tribunal which had, in condemning

[1] *Rem a subselliis ad rostra detulit*, § 111.

Scamander, pronounced a judgment favourable to his client Cluentius. In any case it should be remembered that the present defence was conducted four years after the compromise effected (in B.C. 70) by the *Lex Aurelia*, which provided that the *iudicia* were to be composed one-third of senators, another of equites, and another of *tribuni aerarii*. At the trial of Scamander, in B.C. 74, it is probable that, as counsel for the accused, Cicero would inveigh strongly against the senatorial *régime*, especially as the scandal of the marked voting-tablets (see on § 130) had, about the same time, given fresh proof of judicial corruption in a way that must have strengthened the hands of those who were beginning to agitate for the restoration of their judicial privileges to the knights. Cicero had always had at heart the interests of the equestrian order, and hence his protest—the grounds for which we must next consider—against a proceeding which he alleged would render the members of that order liable to the conspiracy clause in the Sixth Chapter of the *Lex Cornelia de Sicariis et Veneficis*, which was technically applicable only to senators.

THE LEX CORNELIA DE SICARIIS ET VENEFICIS.

After all that has been said, it may appear strange that there should still remain for discussion the question whether the alleged conduct of Cluentius at the trial of the elder Oppianicus was really put forward as a count in the present indictment against him. Nearly seven-eighths of Cicero's speech are taken up with this aspect of the case; but it has been held that Cicero misrepresented the indictment, and that the only charges directly preferred against Cluentius were the charges of poisoning.

The primary purpose of the *Lex Cornelia de Sicariis et*

Veneficis, passed *circ.* B.C. 81, was to inflict penalties for murder and poisoning. It also contained a section (the Sixth Chapter) which dealt with the crime of conspiring to procure the conviction of a person innocently accused on a capital charge—threatening penalties against "those who should be proved to have given false evidence, or induced others to give false evidence, or have combined or conspired in any way to procure the conviction of an innocent man when criminally impeached, or, if acting in the capacity of a judge or juror, have received money for that purpose" (*Ramsay*).[1] The peculiarity of this section —and this is of the highest importance for the proper interpretation of Cicero's argument—was that the *equites* and the lower orders generally were excluded from its operation: it applied only to senators and to the holders of certain offices. Reference may be made, among other passages, to § 155, *omnes id agamus ut haec quam primum in omnes ordines quaestio*[2] *perferatur.*

Many students of the *pro Cluentio* have been of opinion that no charge was made against the defendant under the Sixth Chapter of the Cornelian Law, and that he was

[1] Just. *Inst.*, iv. 18, 5: Digest 48, 1, 1. Sulla had embodied in this statute a *Lex Sempronia* passed by C. Gracchus in B.C. 124, and directed against judicial corruption on the part of senators; *ne quis iudicio circumveniretur*, § 151, where see note.

[2] *I.e.*, the *quaestio inter sicarios*, § 147. The usual explanation of this phrase (cp. *inter sicarios deferre, accusare, defendere*) is that there was no substantive to express murder, corresponding to *veneficium, peculatus*, etc., and that, as it was impossible to say *sicae*, or *de sica deferre*, the short phrase *inter sicarios deferre* and other analogous forms were employed for what would have been, at full length, *ita deferre ut nomen alicuius inter sicarios deferatur.* It has been suggested, however (see Mr. Faussett's note on § 21), that *inter sicarios* may be a quasi-local designation, 'in the Assassination Court': cp. *inter falcarios*, Cat. i., § 8, 'in the sickle-maker's street'; and *inter lignarios*, Liv. xxxv. 41, 'in the carpenter's street,' or 'in the timber market.'

accused of poisoning only, not of judicial murder.[1] They recognize in the elaborate refutation of the popular prejudice on the subject of the trial before Junius, Cicero's boasted achievement of having 'thrown dust in the eyes of the jury,' by defending his client from an accusation that had never been made, in order that he may afterwards be in a position to conciliate the sympathies of the court by generously renouncing the technical plea on which he might have declined to say a single word about the circumstances which led to the conviction of Oppianicus. According to this view, Cluentius was accused only under the Fifth Chapter of the *Lex Cornelia*, which related to poisoning, though Accius had done his best to prejudice him in the eyes of the jury by dwelling on his alleged conduct at the previous trial: Cicero, however, puts his case as though his client had actually been impeached for "judicial murder."

In this edition, on the other hand, the view is maintained that Cluentius, though an eques, was accused, not only of poisoning, but also under that section of the Cornelian Law which related to conspiracy and judicial murder, and which was technically applicable only to senators. The prosecution appears to have advanced the argument that Cluentius was morally guilty under the second head; and also that the time had come when, in view of the changed conditions of judicial administration, the scope of the statute should be extended—by the establishment, even retroactively, of such a precedent as this—to others who might be guilty of similar offences.[2]

[1] See especially Dr. Carl Bardt, 'Zu Cicero's Cluentiana,' in the Programm of the Gymnasium zu Neuwied, Ostern, 1878; Iw. Müller in Bursian's *Jahresbericht*, ii., p. 204 (1878); Davies in *Hermathena*, ii. (1876), p. 391 *sqq.*; and Lendrum, *ibid.*, xiv. (1888), p. 365.

[2] That Accius took this line deliberately, and with his eyes open,

Those who take the other view cite the division of the case adopted in the exordium, and carefully maintained throughout the speech: the prejudice arising out of the bribery scandal (*invidia*) is separated from the charges directly preferred against Cluentius (*crimina*), and Cicero states (§ 3) that, while the latter can be disproved, he can only deal with the prejudice by throwing himself on the protection of the court. In answer to this, it should be noted that the orator does sometimes, as a matter of fact, use the word *crimen* where we should have expected him to use the more insidious term *invidia*: *e.g.* § 8, *Adgrediar ad crimen*, etc., and *veteris istius criminis diluendi potestas*: § 143, *purgandi istius invidiosi criminis*: § 125, *Cluentianae pecuniae crimen*: cp. § 97, *At est hoc illi crimen obiectum.*

Again, it is urged that there are passages in the speech in which it is distinctly stated that the question of corrupt conduct at the *iudicium Iunianum* is not before the court. In support of this view reference has been made to the following passages: § 160, *Reliqua perpauca sunt; quae quia vestrae questionis erant idcirco illi statuerunt fingenda esse sibi et proferenda ne omnium turpissimi reperirentur si in iudicium nihil praeter invidiam attulissent*; and, again, § 164, *Cognoscite nunc id . . . quod vestri iudicii est . . . de criminibus veneni.* But in using such language as this, Cicero must not be taken as implying that judicial corruption formed no part of the present indictment against his client: what he asserts is

as it were, would seem to appear from § 143, where, in the words, *Nimirum tibi istud lex ipsa renuntiavit*, Cicero obviously wishes to intimate his belief that his opponent was aware of the true construction of the statute, in spite of the argument which he had advanced. Cp. § 149, *Nolo quemquam eorum qui adsunt existimare me quae de lege ab Accio dicta sunt, si reticuerim, comprobare.*

that Cluentius, as an eques, is not liable under the statute on which the indictment is framed. It is sufficient, in support of the view here maintained, to cite § 90, a section which contains an express reference to the *Lex Cornelia* as the statute under which the charge of 'judicial murder' was being pressed against Cluentius; and § 144, from which section it clearly appears that the allegation of bribery and corruption formed an actual count in the indictment against him.[1]

But how did it come about that the prosecution brought a charge against Cluentius under a statute to the provisions of which they must have known he was not amenable? The motive was probably in great part political: Accius and his friends wished, by establishing a precedent in the present case, to secure that extension of the Sixth Chapter of the *Lex Cornelia*, which the altered circumstances of judicial administration seemed to demand. Knights as well as senators, the prosecution urged, ought to be held liable to the statute, now that both orders had a share in the administration of the jury-courts (§ 145). Accius had evidently pressed this point hard. He had professed to believe that Cicero would found on the letter of the law (*praesidio legis*, § 143), and had appealed to the court, on the contrary, to administer it according to the spirit: see notes on §§ 156, 160. Behind Accius and his friends were the tribunes and the party they championed. The leaders of the democrats, in B.C. 66, were just as ready to criticise the constitution of the *iudicia*, as administered under the Aurelian Law,

[1] . . . *quod pecuniam acceperit, quod innocentem circumvenerit. Est haec opinio. At si ita esset, hac lege accusatum oportuit qua accusatur Habitus*, § 90. *Nam ut haec ad me causa delata est . . . dixi Habito statim eo capite* QUI COISSET QUO QUIS CONDEMNARETUR *illum esse liberum, teneri autem nostrum ordinem*, § 144. Cp. *hac lege ipsa*, § 116 *ad fin.*: *ea lege . . . qua nunc Habitus accusatur*, § 154.

as the opponents of senatorial monopoly had been in earlier days. They saw no good reason why the provisions of the *Lex Cornelia* should continue to be technically applicable only to senators and officials who had held magistracies by popular election, while there was no means of bringing to justice others who, like Cluentius, were charged with having corrupted members of senatorial juries. Their object accordingly was to secure an extended application of the *Lex Cornelia*, by the precedent which they hoped would be established by the conviction of Cluentius: *nec nunc quidquam agitur—mihi credite iudices et prospicite id quod providendum est—nisi ut equester ordo in huiusce legis periculum concludatur* (§ 152). The opportunity was a favourable one. Many who had voted for the conviction of Oppianicus had themselves been condemned on a criminal charge, and the censors had taken official cognizance of the scandal by stigmatizing, among others, Cluentius himself. The prosecution must have hoped—especially as the defendant was being impeached also under another section of the same statute—that equitable considerations would prevail, and that the jury before which Cluentius appeared would not prejudice itself in the eyes of the people by refusing, on technical grounds, to convict the defendant of a crime of which he was believed really to be guilty. Cicero meets these expectations in the language of emphatic protest. He objects to the attempt to extend to others—whether equestrian jurors (*de eis qui rem iudicarint*, § 152) or members of the general public (*populus Romanus*, §§ 151, 157)—a statute which Sulla had expressly limited to members of that order on which he was conferring the monopoly of the jury courts, probably because he recognized the fact that it would be mainly from members of the senatorial order that his new jurors would be exposed to the risk of bribery and corruption. And in rebutting the arguments of the other

side, Cicero does not scruple to work upon the fears of the mixed tribunal he is now addressing by pointing out the common danger that would be involved in such a precedent: §§ 153, 157.

As bearing out the view of Cicero's argument advanced above, and as subsidiary to the Analysis given on pp. liii.-lv., I may be allowed to quote the following from the Introduction to my Translation, pp. l., li.: "Cicero starts by saying that Accius had made two divisions of his speech. In the first he had endeavoured to show that *the statute ought to be made applicable to Cluentius*[1]: of this argument Cicero says, quite justly, *mihi niti et magno opere confidere videbatur invidia iam inveterata iudicii Iuniani* (§ 1). These words do not necessarily imply that Accius had introduced the subject of the *invidia* by a side-wind, and not as a direct count in the indictment. They merely contain an anticipation of the way in which Cluentius's advocate intends to meet his opponent, viz. by arguing (§ 143 *sq.*) that the unpopularity of the conviction of Oppianicus, and the admitted fact that bribery had been practised at his trial, ought not to prejudice the court against Cluentius, especially as Cluentius is not technically amenable to the statute on which Accius had based his case. This latter fact—though he afterwards professes that Cluentius does not wish to found on it (§§ 144-5)—Cicero at once puts forward in his reference to the second division of the prosecutor's speech, *qua de re lege est haec quaestio constituta* (§ 1), and *quae propria est iudicii vestri et legitimae veneficii quaestionis* (§ 2). This need not be

[1] *Neque me illa oratio commovet quod ait Accius indignum esse facinus si senator iudicio quempiam circumvenerit, legibus eum teneri: si eques Romanus hoc idem fecerit, non teneri* (§ 145): *iniquum tibi videtur, T. Acci, esse non iisdem legibus omnes teneri* (§ 150): *agit enim sic causam T. Accius, adulescens bonus et disertus, omnes cives legibus teneri omnibus* (§ 156).

interpreted to mean that the *crimina* alone constituted the formal indictment; it is rather a forewarning of the position which Cicero afterwards intended to take up (§§ 143-160: cp. especially § 148, *iubet lex ea qua lege haec quaestio constituta est ... quaerere de veneno*). He cannot deny the fact of the bribery scandal (§ 4): if the prosecution had not endeavoured to fasten it directly on Cluentius, their case would have been a very thin one indeed (§ 160). He therefore proceeds at once to meet the *multorum annorum accusatio* (§ 8), and states explicitly, at a subsequent stage, his satisfaction that the bribery scandal *has* at last been made a definite issue: *ante hoc tempus omnino ista res suo nomine in iudicium nunquam est vocata...ut hodierno die primum causa illa defensa sit* (§ 88)."

The only tenable alternative to the argument advanced above would seem to be the view of Zumpt (*Röm. Criminalrecht*, ii. 2), that bribery was really the main charge against Cluentius, but that it was brought under a clause of the *Lex Cornelia* which was applicable to all persons without distinction who should be the 'cause of death' to others. Zumpt relies mainly on the language used by Paulus (*Sent. rec.* v. 23, 1 and 10) in summarizing the provisions of the *Lex Cornelia*, of which he says, "poenam deportationis infligit ei qui hominem occiderit eiusve rei causa furtive faciendi cum telo fuerit et qui venenum hominis necandi causa habuerit vendiderit paraverit falsumve testimonium dixerit, quo quis periret, *mortisve causam praestiterit*." The words in italics may seem too indefinite, and too destitute of support from other sources, to build such a theory on: if they had actually formed a part of Sulla's statute, we may be certain that Accius would not have failed to found on them in his speech for the prosecution, in which case all Cicero's sophistries would have been

addressed to minds already informed of the true facts of the case. At the same time it is right to note that this seems to be the view which has commended itself to an able reviewer of my Translation in the *Athenaeum* (1st August, 1896), from whom I quote the following:—"At first sight it appears almost incredible that Cicero should have been guilty of declaring that only senators and certain other specified classes of persons could be held liable under the section, if, in fact, the statute contained other words which modified or nullified the effect of the words which he quotes. But the orator was capable of using perversely statutes and legal formulae to a far greater extent than scholars have usually been willing to recognize. Any one who has studied long and carefully the speeches for Quinctius and for Caecina must feel that Cicero's capacity for such perversion was almost unlimited. And in the present instance, if his case on the terms of the law had been as strong as his professions about it are, his mode of treatment would surely have been far different. As it is, he deals with the whole matter in a most tentative and imperfect fashion. The question whether Cluentius had been guilty of bribing a jury is first discussed with the utmost elaboration, but without any reference to the statute. Until nearly three-quarters of the speech are over, we hear only vaguely of the '*invidia*' attaching to the charge, and when mention is at last made of the law in connexion with it the orator speaks in a very curious manner: 'I, who was bound to know the laws under which I am called upon to plead, and with which I have to deal, immediately told Habitus that he was not liable under the section.' Cicero never claimed to be a great jurisconsult, and it is strange that he did not fortify his opinion by an appeal to men of greater repute for learning in the law if such an appeal were

really possible. Nowhere does he state that skilled lawyers and courts had *not* supported a different view of the matter; and the omission is most suspicious. Next he catches at a statement made by the opposing counsel that it was expedient to give the law a wider interpretation. When he finally comes face to face with the actual words used in the Sixth Section, he does not deal with them like a man who has a strong case. It is almost certain that he does not quote in full. For example, it is hardly to be supposed that Sulla, when he incorporated in his enactment earlier provisions, relieved the relations of the senators from liability. In view of the incompleteness of the quotations, we should have expected a direct and even triumphant assertion that the statute contained not a word which the other side could quote; but this we do not get. Cicero insinuates rather than states (§ 149) that he will deal with *all* the arguments which his opponent had urged in connexion with the Sixth Section of the Cornelian Law. But no one who is well acquainted with his manner will believe that he has carried this out. In the discussion which we do get there are obvious weaknesses, irrelevancies, and omissions. The contentions quoted from the other side are all directed to expediency; but the opposing counsel must have appealed to legal authority and decided cases. Had he omitted to do so, or been unable to do so, Cicero would have ridden over him roughshod. But the problem is 'res longi subselli' (to quote a phrase of Pompeius, reported by Cicero), and we have only been able to present in part the reasons for believing that the dust which Cicero boasted of having thrown in the eyes of the jury was intended to render them blind rather to the law than to the facts on which the issue turned."

It may be doubted whether even Cicero would have

gone so far in misrepresentation as this theory assumes. Let us look again at the explicit statements which he makes: *A. Cluentius causam dicit eques Romanus ea lege qua senatores et ei qui magistratum habuerunt soli tenentur*, § 156: cp. § 148, where the sections of the statute quoted are seen to apply only to senators, official and unofficial (*qui magistratum habuerint*, *quive in senatu sententiam dixerint*). The orator has already disclaimed all intention of sheltering himself behind the letter of the statute (§§ 143-145), but he does not disdain to take advantage incidentally of the argument which he appears to renounce. Cp. § 145, *quod si nihil aliud esset actum nisi ut hanc causam obtineremus*, *lege recitata peropassem*: §§ 148, 157, and note on § 154.

On the whole, therefore, it seems to be safest to adhere to the view that Cluentius was impeached under the Fifth Chapter of the Cornelian Law, which related to poisoning, and also under the Sixth. Though the prosecution nominally relied on the direct charges brought under the former head, its real strength lay in an elastic construction of the provisions of the Sixth Chapter, especially in view of the strongly prevailing belief that Cluentius had used corrupt means to procure the conviction of his step-father eight years before.

It has been already said that Cicero's boast, reported by Quintilian, that he had "thrown dust in the eyes of the jurymen at the trial of Cluentius," makes it probable that his client was acquitted. The charges of poisoning alleged against Cluentius seem to have had little ground of support. But we have seen that there are grave reasons for doubting the accuracy of Cicero's statements in regard to the conduct of Cluentius at the trial of Oppianicus. The probability rather is that "there was bribery on both sides, and Cluentius was able to bribe the odd man." And suspicion has been shown to attach

also to Cicero's account of some of the incidents which preceded and led up to the trial of Oppianicus,—notably the alleged attempt to poison Cluentius, and the mysterious proceedings of Scamander and Diogenes. Cicero had already, in defending Scamander, appeared for the other side. And the proverbial exigencies of an advocate's position are still further illustrated by the passage in the speech before us, in which he warns his readers against looking on judicial orations as unbiassed and impartial records of fact: § 139. We ought to read the *pro Cluentio* in the light of this caution.

Text and Manuscripts.

The study of the sources of the text of the *pro Cluentio* reveals problems of great difficulty. With the exception of a fragmentary palimpsest (P), there is really no manuscript of first-class authority: those on which recent editors have mainly relied (S and T) are not considered of any account for the text of the other speeches which they contain, and the version of the *pro Cluentio* which they present derives support more from inference and analogy than from the intrinsic authority of the codices themselves. It was Classen who first remodelled the text on the basis of these two manuscripts. Till his edition appeared, in 1831, editors had been content to follow the vulgate pretty much in the form in which it exists in the numerous MSS. of Cicero that are scattered among the libraries of Europe. These are mostly Italian MSS. of the fifteenth and even the sixteenth century, belonging to the class of which Baiter has tersely said "*interpolatis codicibus Italicis nulla fides haberi potest.*" Many of them, while based throughout on the vulgar tradition, have been corrected from German sources; and Classen's achievement

was thought to consist in showing that S and T embody a recension essentially different from that represented in the vulgate. His arguments in favour of the superiority of this recension have been accepted by subsequent editors, except Ramsay.

A more detailed account of the manuscripts on which the text must mainly rely may be inserted here.[1]

P, the *Palimpsestus Taurinensis*, of the fifth or sixth century. This mutilated codex consists of fifty-six leaves, twelve of which contain the following portions of the *pro Cluentio*:

§ 1 (ab initio) to § 7 (p. 4, l. 6, *iudicium*).
§ 18 (p. 9, 26, *huius opprimendi causa*) to § 24 (p. 12, 23, *ac minis*).
§ 32 (p. 17, 8, *Quanto est*) to § 38 (p. 20, 7, *constituunt*).
§ 74 (p. 40, 18, *-tiebatur facile Cannutius*) to § 78 (p. 43, 7, *aliis nonnullis sus—*).
§ 92 (p. 50, 4, *-entio iudicabatur*) to § 94 (p. 51, 14, *tamen*).
§ 101 (p. 54, 11, *suscepta*) to § 103 (p. 55, 21, *uno iudicio mul—*).
§ 129 (p. 69, 7, *ignominia*) to § 131 (p. 70, 16, *probavissem*).
§ 149 (p. 78, 22, *-ne lege copiosissime*) to § 147 (p. 80, 5, *praescripto*).

From this it will be evident that the Turin palimpsest exists only in fragments, extending to less than one-tenth of the whole speech. It was discovered by Peyron, in the earlier part of this century, in the Royal Library at Turin, with a work of St. Augustine written over it.

S, the *Codex Salisburgensis*, formerly at Salzburg (34), now in the Royal Library at Munich (Monacensis, 15734). This MS. is of the fifteenth century, and contains thirty-two of Cicero's orations, of which the *pro Cluentio* is in order the twenty-first. By way of anticipating the

[1] I follow Baiter's lettering: P S T F M in Baiter are, respectively, C A B *d p* in Classen.

characterization of it which will follow later on, I may quote here what is said of it by C. F. W. Müller: "In Fonteiana aliisque prae melioribus recte spernitur, in Cluentiana fere optumus est" (*Cicero*, Pars ii., vol. ii., p. cv.).

T, the *Codex Laurentianus*, xlviii. 12, in the Laurentian Library at Florence. This is one of the numerous MSS. collated by the Jesuit Father Girolamo Lagomarsini (1698-1773), whence it is known as Lagomarsinianus 12. It is closely allied to s, the agreement between the two being generally so complete that we must believe them to be derived from the same archetype. We shall find that such differences as exist go to show that the copyist of T was endeavouring to combine two recensions.

b, the *Codex S. Marci*, n. 106, Lagom. 6. The corrections in this MS. (b^2) are of special importance, as they represent the recension embodied in s and T.

F, described by Classen as 'codex olim bibliothecae S. Bartholomaei Faesulis, inter Faesulanos apud Bandinium n. 187, Lagom. 1, membranaceus, seculi quinti decimi . . . lacunarum immunis.' What these *lacunae* are will appear from the following paragraph.

M, 'Laurentianus plut. li., n. 10, Lagom. 64, membranaceus sec. undecimi, characteribus Langobardicis, form. 4' (Classen). It should be noted that the *Cluentius* is the only speech of Cicero which this codex contains: the rest of it is made up of Varro's *de lingua Latina* and the *Rhetorica ad Herennium*. This may be taken as some evidence that the speech had been singled out for special attention. It is probable that we have in M the original of all the codices in which the same *lacunae* appear, viz. those which extend in many MSS. from § 102, 20 (*-egrinus*) to § 107, 25 (*non quaerunt*), from § 127, 27 (*subscripserunt*) to § 132, 10 (*opinione standum*), from § 149, 17 (*dicenda est*) to § 154, 1

(*quae tunc*), and from § 176, 4 (*quendam*) to § 182, 13 (*honestissimorum*).

W, the *Codex Helmstadius*, n. 304, a manuscript which is most nearly allied to M (see Wrampelmeyer, Progr. Clausthal, Hannover, 1881).

In addition to the above, there are many other codices in various European libraries, all of late date, and possessing little or no authority. Classen cites various readings from nineteen such codd. in addition to the seven already named. I have examined for myself the MSS. in the British Museum, viz. Harl. 2681, 4852, 5428 (*anno* 1470), 16980, Ar. 236, Burn. 155, 157, 159—with little result except so far as Ar. 236 may be held to confirm the reading *quosdam alios deos* § 195, previously attributed to Lambinus (1520-1572), and my proposed omission of *communi Italiae pace*, immediately below (*v. ad loc.*). To these may be added the Oxford MSS., for which Classen depended on the faulty collation published in the Clarendon Press edition of 1783 : Coll. Nov. ccxlix., a codex closely related to S (see Clark, Introd. *pro Milone*, xxxiv. *sq.*) : Coll. Ball. ccxlviii. A (Classen's *m*), an Italian MS. of the 15th century, with copious omissions supplied in the margin : Digby 231 :[1] Laud. Lat. 48 (*anno* 1450—Classen's *i*) : Coll. Linc. xxxix. (Classen's *l*) : Coll. Nov. cccii. : Coll. Linc. xl. (Classen's *w*). The two last agree in breaking off at § 192, 14 *ne forte mater* : so too, Classen's *q*, one of the Laurentian codices.

Lastly, there was a *Codex S. Victoris*, believed by Classen to have been used by Lambinus, and collated also by Gulielmius. I find it cited in what is the earliest separate edition of the *pro Cluentio*, that of Sylvius,

[1] This MS. is wrongly cited by Mr. Clark as Digby 19. In the *Cluentius* it shows none of the marginal additions which he has noted as characterising its version of the *pro Milone* (Introduction, p. xxxiv.).

which is not enumerated in the list of those consulted by Classen.[1] There were also eight Palatine MSS., said by Classen (p. xiii.) to have been negligently collated by Gruter, and two codd. Francii compared by Graevius.

Classen's review of the evidence of his twenty-six manuscripts led him to the belief that there had been two recensions of the text, and that it was the inferior of these that had passed into most MSS. and editions, forming what was still in his time the vulgate, with corrections. Recognizing the recension embodied in S and T as the superior of the two, Classen based his text in the main on these two manuscripts. The Florentine codex (T) was already known to collators: Classen's special service was the discovery that, where it differed from the vulgate, it was generally supported by the *Salisburgensis* (S), and that, while both were late manuscripts, they were probably derived from a common archetype of older date. He therefore included S and T (along with P) in a class by themselves as superior to all others.

Classen's estimate of the importance of S for the *pro Cluentio* is at variance with the opinion expressed in regard to this codex by editors of some of Cicero's other speeches. Thus, most recently, Mr. Clark, in his Introduction to the *pro Milone*, has endeavoured to prove that S "should disappear from the list of first-class authorities." While thoroughly vulgar in its basis, it is described as containing additions and variants characteristic of the better family of MSS.,—changes which have come in *ab extra* and have been grafted on the vulgar stock. Mr. Clark supposes "that in the fifteenth

[1] Pro Cluentio Habito M. Tullii Ciceronis oratio cum F. Sylvii Ambiani Commentariis luculentissimis sub prelo Ascensiano ad Nonas Novembr., MDXXXV.

century there was in circulation a collection of variants, taken from Transalpine sources, which gradually became embodied in the Italian MSS., S being the most highly corrected member of the family" (p. xxxv.). It follows from this that where the better sources exist such codices as S are of practically no importance "except in the rare cases where they have preserved an original reading, while the *meliores* are corrupt."

There is an obvious discrepancy between this view and that which led Classen to rank S in a class by itself, along with T and P, as one of the 'codices praestantissimi' for the *pro Cluentio*. Did Classen go too far in his preference for the recension embodied in ST[1] as against the sources from which the vulgate text had been derived? Two points must be remembered. In the first place, while it may be admitted that the existence of better MSS. might have led to a still greater improvement in the text, it is possible that S and T really represent the vulgate, with corrections. In all probability the original from which they are derived was one of a class of MSS. which, like those on which Mr. Clark mainly relies for his text of the *pro Milone* (*Harleianus*, *Tegernseensis*, and *Erfurtensis*), were corrected in the 9th or 10th

[1] The agreement between S and T is generally so complete that they need hardly be treated separately for the purposes of this discussion. In proof of the suggestion, made above, that the copyist of T was endeavouring to combine two recensions, the following places may be cited :—§ 6, 21 *sint* PS, *sint* ω, om. T. : § 6, 23 *peroraro tum* PS, *peroratum erit* M, *per* * * *tum* T : § 24, 22 *cum Maurius is* P, *cum Aurius is* S, *cum A. Aurius* ω, *cum is* T : § 135, 14 *ob* S, *ad* ω, *ab* T : § 139, 4 *omnes enim illae* S, *omnes enim illae orationes* ω, *omnes enim* T : § 141, 3 *et ex* S, *et* FM, *ex* T : § 143, 18 *imprudentes videlicet* S, *videlicet imprudentes* ω, *videlicet* T (here *imprudentes* was probably written in above the line in the archetype) : § 143, 21 *cui ego* S, *cui ego autem* ω, *cui* T.

century from a recension then current, containing various readings which had approved themselves as a genuine tradition. And again, a composite codex like s may have been drawn from different sources, so that while its version of, *e.g.*, the *pro Milone* may be found to be inferior (especially when compared with existing MSS. of better family), for the *pro Cluentio* it may have had a more trustworthy original to rely upon.

In the settlement of this question the most important factor would seem *à priori* to be the evidence of P, which, though merely a fragment, is unquestionably the oldest of all existing sources. But P makes bad mistakes of its own: one has only to look at the opening part of the speech in Baiter's collation to see what it is capable of.[1] Moreover it is too fragmentary to be accepted as an infallible arbiter between the rival traditions. But the authority of P is, as will be seen from the *apparatus criticus*, a factor by no means to be disregarded. In the following places it is of first-class importance, and merits (for the *pro Cluentio*) the words which Dr. Nohl applies to it in connection with the *pro Milone*, "Solus saepe Ciceronis verba servavit, ubi non modo codd. peccant, sed etiam Quintilianus": § 22, 22 *cccc milia*,[2] § 129, 14 *adfici convenire*, § 130, 1 *multitudini nemini licitum* (for *multitudinem illicitum* ω), § 130, 13 *iudicia reprehendisse* (where all other codd. insert, after *iudicia*, the words *cum equestri ordine*, erroneously repeated from two lines above), § 145 *commovet*.[3] We shall find that, in cases (sometimes doubtful) where the authority of P is accepted as establishing the true text, the vulgate is as often in agreement with it as

[1] § 1, 3 *videatur* for *videbatur*, *alteram* for *altera*: § 1, 4 *orationem* for *rationem*: § 2, 13 *benefici* for *veneficii*.

[2] *quadraginta milia* ST: XL *milia* F: *ccccliii* M.

[3] Cp. § 21, 4 *in ergastulo fuit* P (and Schol. in Lucan, ii. 95), *fuit in ergastulo* ω.

are S and T. On the other hand, where P fails us, the true text could undoubtedly be better established from S and T than from ω, the proportion of what are probably right readings being somewhat as 156 to 97. This is quite consistent with the theory that ST are highly corrected by the infiltration of superior readings. It is interesting to recall the probability that many of these may have been derived from MSS. which no longer exist, *e.g.* the codices which appear in the catalogues of Lorsch (saec. ix.) and Cluny (saec. xii.).

The following are the principal passages where the reading of ST is undoubtedly to be followed (without the support of P, which is wanting), as against the vulgate :

§ 17, 11 *ego qui ad hominum pericula defendenda adiungerer* STb²,	*ego qui* (*quum*) *ad amici* (*animum*) *pericula depellenda adhiberer* ω.
§ 31, 25 *hanc a natura lucem* ST,	*hanc a natura propriam lucem* ω.
§ 47, 8 *diligentia* ST,	*dignitate* ω.
§ 47, 13 *venenum paucis diebus comparatur ... pecunia* ST, Harl. 2681, Sylvius,	*venenum paucis diebus ... pecuniaque* ω.
§ 58, 26 om. S *agitur causa*,	*agitur causa* ω.
§ 64, 4 *corrumpendi iudicii fuisse* STb²,	*corrumpendi fuisse* ω.
§ 66, 10 *fautore* ST,	*auctore* ω.
§ 67, 20 *fame monitae* ST,	*fame dominante* ω.
§ 72, 6 *eis ... degustarant* ST,	*is ... degustarat* ω.
§ 104, 3 *accepisse a Cluentio HScccc* ST,	om. ω.
§ 128, 22 *qui ... deliquerat* ST,	*ne ... delinqueret* ω.
§ 160, 26 *pro rei dignitate* ST,	*pro rei publicae dignitate* ω.
§ 175, 12 *eaque Sex. Abbio* (*Abtio*, *Attio*) STb²,	*et Statio Albio* ω.

In the following important instances the true reading of ST has P to support it :

§ 22, 13 *multis audientibus* PST,	*audientibus* ω.

§ 23, 8 *adolescentis* PST, *adolescentis propinquos* ω.
§ 146, 7 *contineatur*[1] PST, *teneatur* ω.

Less weight is to be attached to such minor coincidences as the occurrence of *esse* in PST at § 23, 15 *si interfectum M. Aurium esse comperisset*, and its omission in ω.[2] On the other hand, as has been stated above, there are many places where P sides with ω rather than with ST: *e.g.* § 77, 10 *esse iudicia* Pω, *iudicia esse* ST: § 32, 14 *plures* Pω, *multos* ST: § 20, 24 *debuerit* Pω, *potuerit* ST,—where ST seem not only to have "improved" *debuerit* into *potuerit*, but also *timere* into *timeret*.

We may argue in the same way that, while neither version is free from accretions, the ST tradition is purer than that of the vulgate: *e.g.* § 3, 2 *in hac* PST, *in hac tanta* ω, where *tanta* is an addition of a familiar kind (so probably also *suum*, § 9, 1, and § 21, 6 : *tota*, § 133, 23): similarly *iam*, § 16, 21, *matre*, *ibid.* 26 ; *publicis*, § 27, 10 ; *secundis*, § 32, 3 ; *suae*, § 72, 13 ; *nummum*, § 87, 6 ; *tribuni plebis*, § 137, 28 ; *iudices*, § 201, 7. Again, in § 16, 1 *verum etiam* in ST is glossed to *sed etiam* in ω, as frequently: see Clark on *pro Milone*, § 61.

The following are places where the readings of ST are, in all probability, to be preferred: § 12, 23 *eae nuptiae* S, *hae nuptiae* ω:[3] § 39, 24 *in quo alligatum* ST, *in quo inter allegatos* ω: § 57, 24 *nisi forte hoc causae* etc., STb², and Cod. S. Vict., om. ω: § 94, 3 *putarunt*[4] ST, *putaverunt*

[1] So § 47, 53 *collocutus* ST, probably rightly, against *locutus* ω.

[2] Cp. § 16, 25 *esse* STb², om. ω: § 75, 6 and § 77, 14 *esse* P, om. ω: § 81, 17 and § 136, 6 *esse* ω, om. ST. There is often a similar uncertainty about *se*: see note on *accepisse dicebat*, § 100.

[3] Copyists more frequently change *eae* to *hae*, *iis* to *his*, etc., than *vice versa* (see Lindsay's *Latin Textual Emendation*, p. 22). So § 27, 2, § 29, 5, § 46, 20, § 198, 12 *iis* ST, *his* ω; § 20, 22 *his* all codd. for *iis*; § 22, 17 *eis* P, *his* STF, *iis* M; § 99, 22, § 131, 25 *eis* edd., *his* STF. On the other hand, § 118, 14 *huius* ω, *eius* ST.

[4] Cicero seems to have preferred, in general, syncopated forms,

ω; § 119, 25 *exempli causa ponam* ST, *exemplis ponam* ω (see note *ad loc.*): § 125, 24 *abortione* S, *potione* ω: § 174, 3 *casum minime*, etc., ST, *mortem satis*, etc., ω.[1] Even a reading like *fuit recenti quam*, § 36, 22, might be defended as possibly the original tradition. The authority of P is against the supposition; but if we might suppose that *recenti* stands, by a kind of haplography, for *re recenti*, the text might well enough run, *quam clara fuit re recenti, quam omnium sermone celebrata!* (cp. on *A. Aurius*, § 23, 11: so § 95, 25, and especially § 147, 3 *reliquaestiones* P,[2] for *reliquae quaestiones*: also § 140, 13, *quasi* ω for *quasi si* ST).

There is also the evidence of the 'transposition variants,' which goes, on the whole, to show that the ST version is to be preferred as more probably representing the collocation of Cicero.[3] A list could be made

except in cases where the use of an unsyncopated form would lend itself to some favourite rhythm: cp. § 117, 22 *observarunt* STM, *observaverunt* F, with § 125, 19 and 22 *curaverit* ST, *curavit* FM, and *ibid.* 22 *necaverit*.

[1] It may help to explain the substitution of *mortem* for *casum* if I record the fact that in one of the MSS. I examined in London (Harl. 5428) an omission has been made of a few lines at this place. The reading given is *propter multorum eiusmodi* [casum minime . . . id ut intellegatis et] *mortem eius*, etc. If this is not a merely accidental omission, caused by the recurrence of *mortem* in the vulgate, it may point to an earlier dislocation of the text.

[2] It has been supposed (see cr. note on Quint. x. 1, 44) that in some MSS. syllables that were to be repeated in sequence were distinguished by letters of a larger size: this would explain the origin of the corruption in § 130, 1, where the archetype may have had multitudINemini licitum: P rightly gives *multitudini nemini licitum*, but the vulgate misinterprets *multitudinem illicitum* (cp. Ramsay, Introd. *ad fin.*).

[3] Copyists seem often to have exercised their ingenuity on the order of words. Thus we have, § 27, 10, *Mater misera nihil mali suspicans mittit* ST, which seems to have been changed in the

out of over a hundred places where, often with absolutely no difference in the meaning, the order of words varies in the two traditions—a phenomenon which certainly suggests the inference that, in the archetype of either of the two, the copyist must have set himself deliberately to alter the collocation. In § 21, 9 P exists to reinforce ST,—*heredem fecit* PST, *fecit heredem* ω: so § 22, 15 *reciperandi filii* PST, *fil. recip.* ω (*recup.*): § 36, 13 *dicere mihi* PSTM, *mihi dicere* ω: § 92, 7 *idem illud* PST, *illud idem* ω: *ibid.* 8 *inquit idcirco* PST, *idcirco inquit* ω. Similarly the order in ST is to be preferred, § 70, 8 *mihi ipsi igitur* ST, *mihi igitur ipsi* ω: § 81, 25 (see note on *ipsam*): § 143, 18 *imprudentes videlicet* S, *videlicet imprudentes* ω: *ibid.* 21 *hoc tibi* ST, and Quint., *tibi hoc* ω: certainly in § 192, 9 *misisset ipsa* ST, *ipsa misisset* ω. At § 25, 5 and § 171, 7 the appearance of *alios, aliud* in the vulgate seems to point to the record of a variant: see note on the latter passage. Against ST, on the other hand, must be quoted § 20, 19 *vos volui* Pω, *volui vos* ST: § 121, 5 *numquam sibi* ω, *sibi numquam* ST: § 21, 8 *est mortuus* ω, *mortuus est* ST.

And ST contain many errors, including some wrong corrections: *e.g.* § 20, 16 *retineretur* for the vulgate *teneretur* (which may be a reason for rejecting *evitaret* immediately below in favour of the vulgate *vitaret*): § 40, 8 *foranum* for *circumforanum*: § 43, 13 *antea* for *tantae*: § 46, 10 *Larinati* for *Aletrinati*: § 50, 3 *constituebantur* for *coniciebantur*: § 62, 21 *aies innocentis* for *age si*

vulgate to *Mater nihil mali misera suspicans mittit*: while in two MSS. (Harl. 2681, Coll. Linc. xl.) I have noted the reading attributed to the *editio princeps* by Classen, *Mater nihil mali suspicans misera mittit.* Sometimes it was the addition of an omitted word in the margin that led to the displacement: thus, § 13, 22 *se sine scelere* ST, *sine scelere se* ω, where *sine scelere* (omitted altogether in Classen's *n*) may be recorded as appearing in the margin of Cod. Ball.

nocentis: § 64, 12 *habes* for *habeam*: § 84, 11 *conciliationis gratiam* for *conciliationem gratiae*: § 93, 18 *seditiones* for *seditiose*: § 94, 27 *repetundis* for *residuis*: § 94, 3 *publice* for *posse*: § 127, 1 *et intimum Guttam* for *in T. Guttam*; *ibid.* 4 *ut non* for *non ut*: § 149, 24 *te a me desiderare* for *a me desiderari.* Sometimes it seems as if the original of ST may have been a MS. abounding in contractions, which were liable to be misinterpreted: *e.g.* in § 12, 11 S has *civitate* for *cupiditate*: in § 112, 6 both S and T give *civis* in place of *vitiis*; while words which easily lend themselves to contracted forms are sometimes omitted, like *causam*, § 120, 22: *iudicium*, § 116, 14.

An appeal might be made to the MSS. of Quintilian to decide between the rival readings. But we find that Quintilian's text sometimes supports the one family, sometimes the other; and besides, Quintilian, though he cites Cicero so frequently, was seldom at pains to quote correctly, and the peculiarities of his version are very generally reproduced by the grammarians and rhetoricians of a later date. The most interesting passages for comparison are § 11, 17 *facile princeps* ω, *princeps* ST and Quint., iv. 2, 130: § 15, 14 *timuisse* ω and Quint., iv. 2, 105, *timuisti* ST: § 58, 12, where ST and Quint., vi. 3, 40, agree in omitting *respicite iudices hominum fortunas*: cp. § 63, 10, § 64, 22, and § 143, where see critical notes.

BIBLIOGRAPHY.

THE following EDITIONS have been consulted :

"Pro Cluentio Habito M. Tullii Ciceronis oratio cum F. Sylvii Ambiani Commentariis luculentissimis sub prelo Ascensiano ad Nonas Novembres, MDXXXV."

"M. Tullii Ciceronis Oratio pro Cluentio Habito. Ad fidem codicum Florentinorum et Monacensium, nunc primum collatorum, addita aliorum manuscriptorum aliunde notorum et veterum editionum varietate, recensuit et critica adnotatione instruxit Ioannes Classen: Bonnae, MDCCCXXXI."

"M. Tullii Ciceronis Opera Quae supersunt omnia ex recensione Io. Casp. Orellii. Editio altera emendatior (Baiter, Halm). Vol. ii., Pars i.: Turici, 1854."

"M. Tullii Ciceronis Orationes." With a Commentary by George Long. Vol. ii., London, 1855.

"M. Tullii Ciceronis Orationes pro A. Cluentio, De Lege Agraria Tres, Pro C. Rabirio, recensuit C. L. Kayser. Editio Stereotypa. Lipsiae, MDCCCLXII."

"Cicero, Pro Cluentio." With Introduction and Notes by William Ramsay: Third Edition: Oxford, Clarendon Press, MDCCCLXXIII.

"M. Tullii Ciceronis Pro A. Cluentio Oratio." With Explanatory and Critical Notes by W. Yorke Faussett: Rivingtons : London, MDCCCLXXXVII.

"M. Tulli Ciceronis Scripta quae manserunt omnia recognovit C. F. W. Mueller: Partis ii. Vol. ii.: Lipsiae, MDCCCXCII.

Translation : "The Speech of Cicero in Defence of Cluentius." Translated into English, with Introduction and Notes, by W. Peterson : London, Macmillan & Co., 1895.

DISSERTATIONS, ETC.

Niemeyer, *Ueber den Prozess gegen A. Cluentius Habitus*: Jahresbericht über die Kieler Gelehrtenschule, Kiel, 1871.

Davies, Cicero's Speech for A. Cluentius Habitus: Hermathena, Vol. ii., 1876.

Bardt, Zu Cicero's Cluentiana: Programm of the Gymnasium at Neuwied, 1878.

Nettleship, On the *Pro Cluentio* of Cicero: Journal of Philology, No. viii. (pp. 67-83), reprinted in "Essays in Latin Literature," First Series.

Lendrum, Faussett's *Pro Cluentio*: Hermathena, Vol. vi., 1888.

Stöcklein, De Iudicio Iuniano: Commentationes Monacenses, 1891, p. 198.

Boll, Num Cluentius de crimine iudicii corrupti causam dixerit: *ibid.*, p. 201.

Hartman, Ad Ciceronis orationem Pro Cluentio annotatiiunculae criticae: Mnemosyne, xxii., p. 413, 1894.

Peterson, Notes on Pro Cluentio: Classical Review, June, 1898.

See also the interesting but somewhat inaccurate version of the circumstances of the trial given by Mr. Froude in "Society in Italy in the Last Days of the Roman Republic": *Short Studies*, ii.

ANALYSIS.

INTRODUCTORY (Chs. i.-iii., §§ 1-8).—Cicero states that he will follow the example of his opponent Accius, and divide the case into two parts, the first dealing with the popular feeling that had been excited by the trial of Oppianicus (*invidia*), the second with the charges of poisoning made against his client (*crimina*). Under the second head the case for the defence may be very briefly stated; but the first—referring as it does to circumstances which had for eight years been made the subject of public agitation and continuous misrepresentation—must be treated at greater length. The orator appeals to the jury to lay aside all prepossessions, and accord him a fair hearing.

FIRST DIVISION OF THE CASE (Chs. iv.-li.).—The existing prejudice against Cluentius (*invidia*) rests on the unfounded belief that he had procured the conviction of Oppianicus by bribery.

§ 9. By way of refutation, Cicero undertakes to show (*a*) that Oppianicus was guilty, and (*b*) that bribery was practised not by Cluentius, the plaintiff, but by Oppianicus, the defendant.

§§ 10-42. *Crimes of Oppianicus.*

Cluentius was forced to prosecute by the infamous wrongs he suffered from Oppianicus, § 11. The family of Cluentius;

origin of the feud between him and his mother Sassia, §§ 11-18. The grounds on which Oppianicus was condemned—a catalogue of abominable crimes; Cluentius, in particular, was driven to prosecute him by an attempt on his own life, §§ 19-42.

§§ 43-61. *Plot against Cluentius.*

Motive of the plot and occasion of the collision between Cluentius and Oppianicus, §§ 43-45. The plot is detected, §§ 46-48. Conviction of Scamander and Fabricius, and, by implication, of Oppianicus, §§ 49-61.

§§ 62-87. *Trial of Oppianicus.*

Oppianicus, in view of these *praeiudicia*, had every motive to practise bribery; Cluentius had none, §§ 62-64. His dealings with Staienus; knavish conduct of the latter, §§ 65-76. The prejudice against Cluentius due to the political agitation of the tribune Quinctius. His innocence proved from his account-books, whereas there is no plausible explanation of the transaction between Oppianicus and Staienus, §§ 77-87.

§§ 88-142. *Previous Decisions alleged to imply the Guilt of Cluentius.*

The issue of the guilt or innocence of Cluentius has never till now been directly raised, § 88. The various *praeiudicia* quoted against him ought not to be allowed to prejudice his case. In particular, the condemnation of C. Junius was due to a passing outburst of popular feeling, §§ 89-96. The convictions of Bulbus, Popilius, Gutta, Staienus, Fidiculanius Falcula, and Septimius Scaevola were due to extraneous causes, not to any charge of corruption at the trial of Oppianicus, though the prevailing belief that his conviction had been procured by bribery was used in each case as a weapon against the defendants, §§ 97-116.

The censors' stigma cannot rank as a judicial decision, §§ 117-134. Nor can anything be founded on the will of Egnatius, § 135, or on the resolution of the senate, which was most guarded in its terms, §§ 136-137.

No more can Cicero's own previous utterances and opinions be quoted against him: retractation of what had previously been said in ignorance of the facts, §§ 138-142.

Technical Argument on the Applicability of the Statute (Chs. lii.-lviii.).—It is in deference to his client's wishes that Cicero does not avail himself of the protection

of the letter of the statute; he relies on the merits, §§ 143-145. But as a matter of fact, according to a strict interpretation of the law (§§ 146-147), Cluentius, being a Roman knight, is not amenable to the section of the *Lex Cornelia* which deals with judicial corruption, §§ 148-149. The motive of the statute, as originally enacted by C. Gracchus, and afterwards in its existing form by Sulla, §§ 150-155. Unfairness of the arguments advanced by the other side in this connection, §§ 156-160.

Second Division of the Case (Chs. lix.-lxviii.).—Refutation of the charges of poisoning (*crimina*).

§§ 161-164. Disproof of unfounded aspersions on the personal character of Cluentius—the result of eight years' mud-raking on the part of the prosecution!

§§ 165-168. Cluentius is altogether innocent of the deaths of Vibius Cappadox and Balbutius, the latter of whom he is accused of having poisoned in mistake for the younger Oppianicus.

§§ 169-194. Nor had he any motive for attempting the life of Oppianicus the elder. The evidence put forward as implicating him is utterly valueless; and the prosecution is altogether due to the unnatural hatred of his mother, Sassia.

Conclusion (Chs. lxix.-lxxi., §§ 195-202).—Cluentius deserves sympathy as the son of such a mother. His fellow-townsmen and others bear testimony to his high character. The speaker commends him to the justice and the clemency of the court.

INDEX CODICUM.

Vide INTRODUCTION, pp. xli.-xliii.

P = Palimpsestus Taurinensis.
S = Codex Salisburgensis, saecl. xv.
T = Codex Laurentianus, saecl. xv.
b (and b^2) = Codex S. Marci.
F = Codex Faesulanus, saecl. xv.
M = Codex Laurentianus, saecl. xi.
W = Codex Helmstadius.

Abbreviations: *codd.* = codices (*i.e.* omnes codices): ω = all, or a majority of, the MSS. not specifically cited: *om.* = omittit, omittunt: *dett.* = deteriores: *secl.* = seclusit.

M. TULLI CICERONIS

PRO A. CLUENTIO HABITO ORATIO

AD IUDICES.

I. Animadverti, iudices, omnem accusatoris orationem 1
in duas divisam esse partes, quarum altera mihi niti et magno opere confidere videbatur invidia iam inveterata iudicii Iuniani, altera tantum modo consuetudinis causa timide et diffidenter attingere rationem veneficii criminum, qua dè re lege est haec quaestio constituta. Itaque mihi certum est hanc eandem distributionem invidiae et criminum sic in defensione servare ut omnes intellegant nihil me nec subterfugere voluisse reticendo nec obscurare dicendo. Sed 2
cum considero quo modo mihi in utraque re sit elaborandum, altera pars, et ea quae propria est iudicii vestri et legitimae veneficii quaestionis, per mihi brevis et non magnae in dicendo contentionis fore videtur; altera autem, quae procul ab iudicio remota est, quae contionibus seditiose concitatis accommodatior est quam tranquillis moderatisque

ad iudices, S: om. ω. 12. *et ea*, P: *est ea*, STM: om. F.

iudiciis, perspicio quantum in agendo difficultatis
3 et quantum laboris sit habitura. Sed in hac difficultate illa me res tamen, iudices, consolatur, quod vos de criminibus sic audire consuestis ut eorum omnium dissolutionem ab oratore quaeratis, ut non existimetis plus vos ad salutem reo largiri oportere quam quantum defensor purgandis criminibus consequi et dicendo probare potuerit: de invidia autem sic inter vos disceptare debetis ut non quid dicatur a nobis, sed quid oporteat dici consideretis. Agitur enim in criminibus A. Cluenti proprium periculum, in invidia causa communis. Quam ob rem alteram partem causae sic agemus ut vos doceamus, alteram sic ut oremus; in altera diligentia vestra nobis adiungenda est, in altera fides imploranda; nemo est enim qui invidiae sine vestro ac sine talium
4 virorum subsidio possit resistere. Equidem quod ad me attinet, quo me vertam nescio. Negem fuisse illam infamiam iudicii corrupti? negem esse illam rem agitatam in contionibus, iactatam in iudiciis, commemoratam in senatu? evellam ex animis hominum tantam opinionem, tam penitus insitam, tam vetustam? Non est nostri ingenii: vestri auxilii est, iudices, huius innocentiae sic in hac calamitosa fama quasi in aliqua perniciosissima flamma atque in communi incendio subvenire.

5 II. Etenim sicut aliis in locis parum firmamenti et parum virium veritas habet, sic in hoc loco falsa

2. *in hac*, PS^{1}T: *in hac tanta*, ω. 5. *omnium*, P: *omnem*, ω. 9. *inter vos*, STF: *inter nos*, PM. 19. *esse*, om. dett.

invidia imbecilla esse debet. Dominetur in contionibus, iaceat in iudiciis; valeat in opinionibus ac sermonibus imperitorum, ab ingeniis prudentium repudietur; vehementes habeat repentinos impetus, spatio interposito et causa cognita consenescat: denique illa definitio iudiciorum aequorum, quae nobis a maioribus tradita est, retineatur, ut in iudiciis et sine invidia culpa plectatur et sine culpa invidia ponatur. Quam ob rem a vobis, iudices, ante quam **6**
de ipsa causa dicere incipio, haec postulo: primum—id quod aequissimum est—ut ne quid huc praeiudicati adferatis (etenim non modo auctoritatem, sed etiam nomen iudicum amittemus, nisi hic ex ipsis causis iudicabimus ac si ad causas iudicia iam facta domo deferemus); deinde si quam opinionem iam vestris mentibus comprehendistis, si eam ratio convellet, si oratio labefactabit, si denique veritas extorquebit, ne repugnetis eamque animis vestris aut libentibus aut aequis remittatis; tum autem, cum ego una quaque de re dicam et diluam, ne ipsi quae contraria sint taciti cogitationi vestrae subiciatis, sed ad extremum exspectetis meque meum dicendi ordinem servare patiamini: cum peroraro, tum, si quid erit praeteritum, animo requiratis.

III. Ego me, iudices, ad eam causam accedere **7**
quae iam per annos octo continuos ex contraria parte audiatur atque ipsa opinione hominum tacita

11. *huic*, ST: cp. § 142, 8. 14. *ac si*, ω: *si*, ST b². 21. *sint*, PS: *sunt*, ω: om. T. 22. *ad*, P and ω: om. ST. *meque*, P: *me*, ST: *et me*, FMW. 24. *animo*, codd.: *a me*, Lambinus, Müller. Qy. *animo a me?*

prope convicta atque damnata sit, facile intellego: sed si qui mihi deus vestram ad me audiendum benivolentiam conciliarit, efficiam profecto ut intellegatis nihil esse homini tam timendum quam invidiam, nihil innocenti suscepta invidia tam optandum quam aequum iudicium, quod in hoc uno denique falsae infamiae finis aliquis atque exitus reperiatur. Quam ob rem magna me spes tenet, si quae sunt in causa explicare atque omnia dicendo consequi potuero, hunc locum consessumque vestrum, quem illi horribilem A. Cluentio ac formidolosum fore putaverunt, eum tandem eius fortunae miserae multumque iactatae portum ac perfugium futurum.
8 Tametsi permulta sunt quae mihi, ante quam de causa dico, de communibus invidiae periculis dicenda esse videantur, tamen, ne diutius oratione mea suspensa exspectatio vestra teneatur, adgrediar ad crimen cum illa deprecatione, iudices, qua mihi saepius utendum esse intellego, sic ut me audiatis quasi hoc tempore haec causa primum dicatur, sicuti dicitur, non quasi saepe iam dicta et numquam probata sit. Hodierno enim die primum veteris istius criminis diluendi potestas est data: ante hoc tempus error in hac causa atque invidia versata est. Quam ob rem dum multorum annorum accusationi breviter dilucideque respondeo, quaeso ut me, iudices, sicuti facere instituistis, benigne attenteque audiatis.

9 IV. Corrupisse dicitur A. Cluentius iudicium

2. *qui*, PS^{1}T: *quis*, ω. 15. *dico*, STFM: *dicam*, some codd. and edd. 22. *istius*, FM: *ipsius*, ST: [*veteris*] *ipsius*, Kayser, Faussett. 26. *sicuti*, ω: *sicut*, ST (as again at § 23, 1, where P and ω agree).

pecunia, quo inimicum innocentem Statium Albium condemnaret. Ostendam, iudices, primum—quoniam caput illius atrocitatis atque invidiae fuit innocentem pecunia circumventum—neminem umquam maioribus criminibus, gravioribus testibus esse in iudicium vocatum; deinde ea de eo praeiudicia esse facta, ab ipsis iudicibus a quibus condemnatus est, ut non modo ab isdem, sed ne ab aliis quidem ullis absolvi ullo modo posset. Cum haec docuero, tum illud ostendam, quod maxime requiri intellego, iudicium illud pecunia esse temptatum non a Cluentio, sed contra Cluentium, faciamque ut intellegatis in tota illa causa quid res ipsa tulerit, quid error adfinxerit, quid invidia conflarit.

Primum igitur illud est, ex quo intellegi possit **10**
debuisse Cluentium magno opere causae confidere, quod certissimis criminibus et testibus fretus ad accusandum descenderit. Hoc loco faciendum mihi, iudices, est ut vobis breviter illa quibus Albius est condemnatus crimina exponam. Abs te peto, Oppianice, ut me invitum de patris tui causa dicere existimes, adductum fide atque officio defensionis. Etenim tibi si in praesentia satis facere non potuero, tamen multae mihi ad satis faciendum reliquo tempore facultates dabuntur: Cluentio nisi nunc satis fecero, postea mihi satis faciendi potestas non erit. Simul et illud quis est qui dubitare debeat, contra damnatum et mortuum pro incol-

1. *inimicum*, ST: *inimicum suum*, ω (cp. § 21, 6). 3. *illius caput*, ST, Classen. Qy. *illud caput illius*? 18. Qy. *descendit*? (see Notes). 23. *satis facere*, om. ST (see Notes).

umi et pro vivo dicere? cum illi in quem dicitur damnatio omne ignominiae periculum iam abstulerit, mors vero etiam doloris; hic autem, pro quo dicimus, nihil possit offensionis accipere sine acerbissimo animi sensu ac molestia et sine summo
11 dedecore vitae et turpitudine? Atque ut intellegatis Cluentium non accusatorio animo, non ostentatione aliqua aut gloria adductum, sed nefariis iniuriis, cotidianis insidiis, proposito ante oculos vitae periculo, nomen Oppianici detulisse, paulo longius exordium rei demonstrandae petam; quod quaeso, iudices, ne moleste patiamini; principiis enim cognitis multo facilius extrema intellegetis.

V. A. Cluentius Habitus fuit, pater huiusce, iudices, homo non solum municipii Larinatis, ex quo erat, sed etiam regionis illius et vicinitatis virtute, existimatione, nobilitate facile princeps. Is cum esset mortuus Sulla et Pompeio consulibus, reliquit hunc annos xv natum, grandem autem et nubilem filiam, quae brevi tempore post patris mortem nupsit A. Aurio Melino, consobrino suo, adulescenti in primis, ut tum habebatur, inter suos
12 et honesto et nobili. Cum essent eae nuptiae plenae dignitatis, plenae concordiae, repente est exorta mulieris importunae nefaria libido, non solum dedecore, verum etiam scelere coniuncta. Nam Sassia, mater huius Habiti — mater enim a

1. *et pro vivo*, STFM: *et vivo*, ω, Sylvius, Lambinus, Ramsay. 3. *hic ... dicimus ... accipere*, ST: *huic ... dicitur ... accedere*, ω. 5. *molestia*, ST b^2: *dolore*, ω (see on *domo*, § 27). 17. *facile*, om. ST and Quint. iv. 2, 130. 23. *eae*, S: *hae*, ω. See p. xlviii. note 3.

me in omni causa, tametsi in hunc hostili odio et crudelitate est, mater, inquam, appellabitur, neque umquam illa ita de suo scelere et immanitate audiet ut naturae nomen amittat; quo enim est ipsum nomen amantius indulgentiusque maternum, hoc illius matris, quae multos iam annos et nunc cum maxime filium interfectum cupit, singulare scelus maiore odio dignum esse ducetis. Ea igitur mater Habiti, Melini illius adulescentis, generi sui, contra quam fas erat amore capta, primo, neque id ipsum diu, quoquo modo poterat, in illa *se* cupiditate continebat: deinde ita flagrare coepit amentia, sic inflammata ferri libidine, ut eam non pudor, non pudicitia, non pietas, non macula familiae, non hominum fama, non filii dolor, non filiae maeror a cupiditate revocaret. Animum **13**
adulescentis, nondum consilio ac ratione firmatum, pellexit eis omnibus rebus quibus illa aetas capi ac deliniri potest. Filia, quae non solum illo communi dolore muliebri in eius modi viri iniuriis angeretur, sed nefarium matris pelicatum ferre non posset, de quo ne queri quidem se sine scelere posse arbitraretur, ceteros sui tanti mali ignaros esse cupiebat, in huius amantissimi sui fratris manibus et gremio maerore et lacrimis consenescebat.
Ecce autem subitum divortium, quod solacium malor- **14**

1. *in omni causa*, ST: *nominis causa*, ω: om. Quint. Declam. 388 (Ritter, p. 441). 8. *iudicabitis*, S. 11. *in illa se cupiditate*, ego scripsi. 12. *continebat*, ST: *continebatur*, ω and most edd.: *se continebat*, Faussett, after Baiter. 14. *non pudicitia*, om. ST. 19. Qy. *deleniri*: ? see Müller's critical note: (§ 28, 25).

um omnium fore videbatur! Discedit a Melino Cluentia, ut in tantis iniuriis non invita, ut a viro non libenter. Tum vero illa egregia et praeclara mater palam exsultare laetitia, triumphare gaudio coepit, victrix filiae non libidinis. Itaque diutius suspicionibus obscuris laedi famam suam noluit. Lectum illum genialem, quem biennio ante filiae suae nubenti straverat, in eadem domo sibi ornari et sterni expulsa atque exturbata filia iubet: nubit genero socrus nullis auspicibus, nullis auctoribus,
15 funestis ominibus omnium. VI. O mulieris scelus incredibile et praeter hanc unam in omni vita inauditum! o libidinem effrenatam et indomitam! o audaciam singularem! Nonne timuisse, si minus vim deorum hominumque famam, at illam ipsam noctem facesque illas nuptiales! non limen cubiculi! non cubile filiae! non parietes denique ipsos, superiorum testes nuptiarum! Perfregit ac prostravit omnia cupiditate ac furore: vicit pudorem
16 libido, timorem audacia, rationem amentia. Tulit hoc commune dedecus familiae, cognationis, nominis graviter filius; augebatur autem eius molestia cotidianis querimoniis et adsiduo fletu sororis; statuit tamen nihil sibi in tantis iniuriis ac tanto scelere matris gravius esse faciendum quam ut illa ne uteretur, ne, quae videre sine summo animi dolore non poterat, ea, si matre uteretur, non

5. *Itaque diutius* ω : *diutius* ST (see Notes). 14. *timuisse,* ω and Quint. iv. 2, 105: *timuisti,* ST. 21. *familiae,* ST: *iam familiae,* ω (cp. §§ 90, 106). 25. *esse,* ST b^2: om. ω. 26. *illa,* ST: *illa matre,* ω. *ne quae,* Garatoni: *namque,* ST: *ne quam,* ω.

solum videre, verum etiam probare suo iudicio putaretur.

Initium quod huic cum matre fuerit simultatis 17
audistis: pertinuisse hoc ad causam tum, cum reliqua cognoveritis, intellegetis. Nam illud me non praeterit, cuiuscumque modi sit mater, tamen in iudicio filii de turpitudine parentis dici vix oportere. Non essem ad ullam causam idoneus, iudices, si hoc, quod in communibus hominum sensibus atque in ipsa natura positum atque infixum est, id ego, qui ad hominum pericula defendenda adiungerer, non viderem. Facile intellego non modo reticere homines parentum iniurias, sed etiam animo aequo ferre oportere. Sed ego ea quae ferri possunt ferenda, quae taceri tacenda esse arbitror. Nihil in vita 18
vidit calamitatis A. Cluentius, nullum periculum mortis adiit, nihil mali timuit, quod non totum a matre esset conflatum et profectum. Quae hoc tempore sileret omnia, atque ea, si oblivione non posset, tamen taciturnitate sua tecta esse pateretur; sed vero sic agitur ut prorsus reticeri nullo modo possit. Hoc enim ipsum iudicium, hoc periculum, illa accusatio, omnis testium copia quae futura est, a matre initio est adornata, a matre hoc tempore instruitur atque omnibus eius opibus et copiis comparatur. Ipsa denique nuper Larino huius opprimendi causa Romam advolavit: praesto est mulier audax, pecun-

1. *verum*, ST: *sed*, ω. 10. *in ipsa*, ω: *ipsa*, ST. 11. *defendenda*, ST (§ 157): *depellenda*, ω. *adiungerer*, ST b²: *adhiberer*, ω. 18. *profectum*, STM: *perfectum*, F. 20. *sed vero*, ST: *sed ea vero*, M. 21. *sic agitur*, SF: *sic agit*, TM. *reticeri*, ST: *reticere*, ω. 23. *illa accusatio omnis*, codd.: *illa omnis*, Madvig.

iosa, crudelis: instituit accusatores, instruit testes: squalore huius et sordibus laetatur, exitium exoptat, sanguinem suum profundere omnem cupit, dum modo profusum huius ante videat. Haec nisi omnia perspexeritis in causa, temere a nobis illam appellari putatote: sin erunt et aperta et nefaria, Cluentio ignoscere debebitis quod haec a me dici patiatur: mihi ignoscere non deberetis, si tacerem.

19 VII. Nunc iam summatim exponam quibus criminibus Oppianicus damnatus sit, ut et constantiam A. Cluenti et rationem accusationis perspicere possitis; ac primum causa accusandi quae fuerit ostendam, ut id ipsum A. Cluentium vi ac necessitate coactum
20 fecisse videatis. Cum manifesto venenum deprehendisset quod vir matris Oppianicus ei paravisset, et res non coniectura, sed oculis ac manibus teneretur, neque in causa ulla dubitatio posset esse, accusavit Oppianicum: quam constanter et quam diligenter, postea dicam: nunc hoc scire vos volui, nullam huic aliam accusandi causam fuisse nisi uti propositum vitae periculum et cotidianas capitis insidias hac una ratione vitaret. Atque ut intellegatis eis accusatum esse criminibus Oppianicum ut neque accusator timere neque reus sperare debuerit, pauca vobis illius iudicii crimina exponam; quibus cognitis nemo vestrum mirabitur illum diffidentem rebus suis ad Staienum atque ad pecuniam confugisse.

21 Larinas quaedam fuit Dinaea, socrus Oppianici, quae filios habuit M. et N. Aurios et Cn. Magium

6. *sin*, PST: *sin autem*, FM. 7. *debebitis*, P: *debetis*, ω. 22. *vitaret*, P and ω: *evitaret*, ST. 24. *debuerit*, P and ω: *potuerit*, ST.

et filiam Magiam, nuptam Oppianico. M. Aurius adulescentulus bello Italico captus apud Asculum in Q. Sergi senatoris (eius qui inter sicarios damnatus est) manus incidit, et apud eum in ergastulo fuit; N. autem Aurius frater eius mortuus est, heredemque Cn. Magium fratrem reliquit; postea Magia uxor Oppianici mortua est; postremo unus qui reliquus erat Dinaeae filius, Cn. Magius, est mortuus. Is heredem fecit illum adulescentem Oppianicum sororis suae filium, eumque partiri cum Dinaea matre iussit. Interim venit index ad Dinaeam neque obscurus neque incertus, qui nuntiaret ei filium eius, M. Aurium, vivere et in agro Gallico esse in servitute. Mulier amissis liberis **22**
cum unius reciperandi filii spes esset ostentata, omnes suos propinquos filiique sui necessarios convocavit, et ab eis flens petivit ut negotium susciperent, adulescentem investigarent, sibi restituerent eum filium quem tamen unum ex multis fortuna reliquum esse voluisset. Haec cum agere instituisset, oppressa morbo est; itaque testamentum fecit eius modi ut illi filio HS cccc milia legaret, heredem institueret eundem illum Oppianicum, nepotem suum; atque eis diebus paucis est mortua Propinqui tamen illi, quem ad modum viva Dinaea instituerant, ita mortua illa ad investigandum M. Aurium cum eodem illo indice in agrum Gallicum profecti sunt. VIII. Interim Oppianicus,—ut erat, **23**

6. *fratrem*, PST: *fratrem suum*, ω (cp. § 9, 1). 9. *heredem fecit*, PST: *fecit heredem*, ω. 17. *eis*, P: *his*, STF: *iis*, M. See p. xlviii. note 3. 22. *HS cccc milia*, P. 24. *his*, codd. (Classen, Ramsay, Faussett).

sicuti ex multis rebus reperietis, singulari scelere et audacia,—per quendam Gallicanum, familiarem suum, primum illum indicem pecunia corrupit; deinde ipsum *M.* Aurium non magna iactura facta tollendum interficiendumque curavit. Illi autem qui erant ad propinquum investigandum et reciperandum profecti litteras Larinum ad Aurios illius adulescentis suosque necessarios mittunt, 'sibi difficilem esse investigandi rationem, quod intellegerent indicem ab Oppianico esse corruptum.' Quas litteras *A.* Aurius, vir fortis et experiens et domi nobilis et M. illius Auri perpropinquus, in foro palam, multis audientibus, cum adesset Oppianicus, recitat et clarissima voce se nomen Oppianici, si interfectum M. Aurium esse comper-
24 isset delaturum esse testatur. Interim brevi tempore illi qui erant in agrum Gallicum profecti Larinum revertuntur: interfectum esse M. Aurium renuntiant. Animi non solum propinquorum, sed etiam omnium Larinatium odio Oppianici et illius adulescentis misericordia commoventur; itaque cum A. Aurius, is qui antea denuntiarat, clamore hominem ac minis insequi coepisset, Larino profugit et se in castra clarissimi viri, Q. Metelli, contulit.
25 Post illam autem fugam, sceleris et conscientiae testem, numquam se iudiciis, numquam legibus, num-

4. *M.*, suppl. Baiter. 8. *adolescentis*, PST: *adolescentis propinquos*, ω. 9. *quod*, P and ω: *cum*, ST., § 98. 11. *A.*, om. PST: cp. §§ 24, 25. 13. *multis*, PST: om. ω. 15. *esse*, PST: om. ω. 17. *agrum Gallicum*, P and ω: *Galliam*, ST. 25. *illam autem fugam*, ST: *illam fugam autem*, FM: *illam fugam et*, dett. 26. *numquam se ... legibus*, om. ST.

quam inermum inimicis committere ausus est, sed per illam L. Sullae vim atque victoriam Larinum in summo timore omnium cum armatis advolavit: quattuorviros, quos municipes fecerant, sustulit: se a Sulla et tres praeterea factos esse dixit, et ab eodem sibi esse imperatum ut *A.* Aurium, illum qui sibi delationem nominis et capitis periculum ostentarat, et alterum *A.* Aurium et eius L. filium et Sex. Vibium, quo sequestre in illo indice corrumpendo dicebatur esse usus, proscribendos interficiendosque curaret. Itaque illis crudelissime interfectis non mediocri ab eo ceteri proscriptionis et mortis metu tenebantur. His rebus in causa iudicioque patefactis quis est qui illum absolvi potuisse arbitretur ?

IX. Atque haec parva sunt: cognoscite reliqua, ut non aliquando condemnatum esse Oppianicum, sed aliquam diu incolumem fuisse miremini.

Primum videte hominis audaciam: Sassiam in **26** matrimonium ducere, Habiti matrem,—illam cuius virum A. Aurium occiderat,—concupivit. Utrum impudentior hic qui postulet an crudelior illa, si nubat, difficile dictu est; sed tamen utriusque humanitatem constantiamque cognoscite. Petit **27** Oppianicus ut sibi Sassia nubat, et id magno opere contendit; illa autem non admiratur audaciam, non impudentiam aspernatur, non denique illam Oppianici domum viri sui sanguine redundantem

1. *inermum*, M : *inermem*, STF (cp. *hilaro*, § 72). 5. *tres praeterea*, ST : *alios pr. tres*, ω (here *alios* = *al*, the sign of a marginal variant: cp. § 171, 7). 13. *tenebantur*, ST : *terreb.*, FM. 14. *arbitraretur*, (codd. and § 96, 10). 15. *Atque*, codd.: Qy. *Atqui* ?

reformidat, sed, 'quod haberet ille tres filios,' idcirco se ab eis nuptiis abhorrere respondit. Oppianicus, qui pecuniam Sassiae concupivisset, domo sibi quaerendum remedium existimavit ad eam moram quae nuptiis adferebatur. Nam cum haberet ex Novia infantem filium, alter autem eius filius, Papia natus, Teani Apuli, (quod abest a Larino XVIII milia passuum), apud matrem educaretur, arcessit subito sine causa puerum Teano: quod facere nisi ludis aut festis diebus antea non solebat. Mater misera nihil mali suspicans mittit. Ille se Tarentum proficisci cum simulasset, eo ipso die puer, hora undecima cum valens in publico visus esset, ante noctem mortuus et postridie ante quam luceret
28 combustus est. Atque hunc tantum maerorem matri prius hominum rumor quam quisquam ex Oppianici familia nuntiavit. Illa cum uno tempore audisset sibi non solum filium, sed etiam exsequiarum munus ereptum, Larinum confestim exanimata venit et ibi de integro funus iam sepulto filio fecit. Dies nondum decem intercesserant cum ille alter filius infans necatur. Itaque nubit Oppianico continuo Sassia, laetanti iam animo et spe optime confirmato: nec mirum, quae se non nuptialibus donis, sed filiorum funeribus esse delinitam videret. Ita quod ceteri propter liberos pecuniae cupidiores esse solent, ille propter pecuniam

1. *ille tres,* ST: *tres ille,* ω. 7. *Teani Apuli,* MW: *Teanopuli,* F: *Teano,* ST. 10. *ludis,* ST: *ludis publicis,* ω. 11. *misera nihil mali,* ST: *nihil mali misera,* ω. 24. *optime,* STW: *optima,* ω. 25. *esse,* ST: om. ω (cp. § 75). 26. *Ita quod,* ST: *itaque,* FMW. 27. *esse solent,* ST: *solent esse,* ω.

liberos amittere iucundum esse duxit. X. Sentio, 29
iudices, vos pro vestra humanitate his tantis sceleribus breviter a me demonstratis vehementer esse commotos: quo tandem igitur animo fuisse illos arbitramini quibus eis de rebus non modo audiendum fuit, verum etiam iudicandum? Vos auditis de eo in quem iudices non estis, de eo quem non videtis, de eo quem odisse iam non potestis, de eo qui et naturae et legibus satis fecit,—quem leges exsilio, natura morte multavit: auditis non ab inimico, auditis sine testibus, auditis cum ea quae copiosissime dici possunt breviter a me strictimque dicuntur. Illi audiebant de eo de quo iurati sententias ferre debebant, de eo cuius praesentis nefarium et consceleratum vultum intuebantur, de eo quem omnes oderant propter audaciam, de eo quem omni supplicio dignum esse ducebant: audiebant ab accusatoribus, audiebant verba multorum testium, audiebant cum una quaque de re a P. Cannutio, homine eloquentissimo, graviter et diu
diceretur. Et est quisquam qui, cum haec cognoverit, 30
suspicari possit Oppianicum iudicio oppressum et circumventum esse innocentem?

Acervatim iam reliqua, iudices, dicam, ut ad ea quae propiora huiusce causae et adiunctiora sunt perveniam: vos quaeso memoria teneatis non mihi hoc esse propositum ut accusem Oppianicum mortuum, sed cum hoc persuadere vobis velim, iudicium ab hoc non esse corruptum, hoc uti initio ac funda-

1. *iucundum*, STM: *iucundius*, F (and Ramsay). 12. *a me*, om. ST. 16. *omnes*, ST b[2]: om. ω. 25. *propriora*, STM. *huiusce*, S: *huius*, FMW. 27. *mortuum hominem*, ST.

mento defensionis, Oppianicum hominem sceleratissimum et nocentissimum esse damnatum. Qui uxori suae Cluentiae, quae amita huius Habiti fuit, cum ipse poculum dedisset, subito illa in media potione exclamavit se maximo cum dolore emori; nec diutius vixit quam locuta est, nam in ipso sermone hoc et vociferatione mortua est. Et ad hanc mortem tam repentinam vocesque morientis omnia praeterea quae solent esse indicia et vestigia veneni in illius mortuae corpore fuerunt.

31 XI. Eodemque veneno C. Oppianicum fratrem necavit. Neque est hoc satis: tametsi in ipso fraterno parricidio nullum scelus praetermissum videtur, tamen, ut ad hoc nefarium facinus accederet, aditum sibi aliis sceleribus ante munivit. Nam cum esset gravida Auria, fratris uxor, et iam appropinquare partus putaretur, mulierem veneno interfecit ut una illud quod erat ex fratre conceptum necaretur. Post fratrem adgressus est: qui sero, iam exhausto illo poculo mortis, cum et de suo et de uxoris interitu clamaret testamentumque mutare cuperet, in ipsa significatione huius voluntatis est mortuus. Ita mulierem ne partu eius ab hereditate fraterna excluderetur necavit; fratris autem liberos prius vita privavit quam illi hanc a natura lucem accipere potuerunt, ut omnes intellegerent nihil ei clausum, nihil sanctum esse posse, a cuius audacia fratris liberos

3. *fuisset*, ST. 5. *emori*, ST: *mori*, FMW. 7. *tam*, ω: om. ST. 8. *vocesque*, ST: *vocemque*, FM. 17. *putaretur*, ST b²: *videretur*, ω. 25. *lucem*, ST: *propriam lucem*, FMW. Qy.? [*propitiam*] *lucem* (see Notes). 26. *clausum nihil*, om. s¹.

ne materni quidem corporis custodiae tegere potuis-
sent. Memoria teneo Milesiam quandam mulierem, 32
cum essem in Asia, quod ab heredibus [secundis]
accepta pecunia partum sibi ipsa medicamentis
abegisset, rei capitalis esse damnatam; nec iniuria,
quae spem parentis, memoriam nominis, subsidium
generis, heredem familiae, designatum rei publicae
civem sustulisset. Quanto est Oppianicus in eadem
iniuria maiore supplicio dignus! si quidem illa, cum
suo corpori vim attulisset, se ipsa cruciavit, hic
autem idem illud effecit per alieni corporis mortem
atque cruciatum. Ceteri non videntur in singulis
hominibus multa parricidia suscipere posse: Oppian-
icus inventus est qui in uno corpore plures necaret.
XII. Itaque cum hanc eius consuetudinem audaciam- 33
que cognosset avunculus illius adulescentis Oppianici,
Cn. Magius, isque, cum gravi morbo adfectus esset,
heredem illum sororis suae filium faceret, adhibitis
amicis, praesente matre sua Dinaea, uxorem suam
interrogavit essetne praegnans; quae cum se esse
respondisset, ab ea petivit ut se mortuo apud Din-
aeam, quae tum ei mulieri socrus erat, quoad par-
eret habitaret, diligentiamque adhiberet ut id quod
conceperat servare et salvum parere posset. Itaque
ei testamento legat grandem pecuniam a filio, si qui
natus esset: ab secundo herede nihil legat. Quid 34

3. *secundis,* FMW: om. ST (see Notes). 10. *ipsa,* PST: *ipsam,* ω. 14. *plures,* P and ω: *multos,* ST. 17. *isque cum,* P: *is qui,* T b^2: *isque,* ω. *esset,* Halm: *esset et,* ω (with *isque,* Classen, Ramsay). 18. *adibitis amicis,* P: *am. adh.,* ω. 24. *servare et,* P: *servaret ut,* ω. 26. *esset,* P and ω: *erit,* ST b^2.

de Oppianico suspicatus sit, videtis: quid iudicarit, obscurum non est: nam cuius filium faceret heredem, eum tutorem liberis non adscripsit. Quid Oppianicus fecerit cognoscite, ut illum Magium intellegatis non longe animo prospexisse morientem. Quae pecunia mulieri legata erat a filio, si qui natus esset, eam praesentem Oppianicus non debitam mulieri solvit, si haec solutio legatorum et non merces abortionis appellanda est; quo illa pretio accepto multisque praeterea muneribus, quae tum ex tabulis Oppianici recitabantur, spem illam quam in alvo commendatam a viro continebat victa avaritia sceleri

35 Oppianici vendidit. Nihil posse iam ad hanc improbitatem addi videtur: attendite exitum. Quae mulier obtestatione viri decem illis mensibus ne domum quidem ullam nisi socrus suae nosse debuit, haec quinto mense post viri mortem ipsi Oppianico nupsit. Quae nuptiae non diuturnae fuerunt; erant enim non matrimonii dignitate, sed sceleris societate coniunctae.

36 XIII. Quid? illa caedes Asuvi Larinatis, adulescentis pecuniosi, quam clara tum recenti re fuit, quam omnium sermone celebrata! Fuit Avillius quidam Larino perdita nequitia et summa egestate, arte quadam praeditus ad libidines adulescentulorum excitandas accommodata: qui ut se blanditiis et ad-

2. *cuius*, PST: *cum eius*, ω. 5. *non longe*, ST b^2: *longe*, P and ω (cp. § 67, 20, where the *non* before *ignoratis* has disappeared from all MSS. except ST). 6. *esset*, P and ω: *erit*, STb^2. 22. *fuit quam*, FM: *fuit et quam*, P: *fuit recenti quam*, ST. 24. *Larino*, PST: *Larinas*, ω. 26. *accommodata*, P (?): *accommodatus*, ω (cp. § 79, 16).

sentationibus in Asuvi consuetudinem penitus immersit, Oppianicus continuo sperare coepit hoc se Avillio tanquam aliqua machina admota capere Asuvi adulescentiam et fortunas eius patrias expugnare posse. Ratio excogitata Larini est, res translata Romam; inire enim consilium facilius in solitudine, perficere rem eius modi commodius in turba posse arbitrati sunt. Asuvius cum Avillio Romam est profectus: hos vestigiis Oppianicus consecutus est. Iam ut Romae vixerint, quibus conviviis, quibus flagitiis, quantis et quam profusis sumptibus, non modo conscio sed etiam conviva et adiutore Oppianico, longum est dicere mihi, praesertim ad alia properanti: exitum huius adsimulatae familiaritatis cognoscite. Cum esset adulescens apud 37
mulierculam quandam, atque ubi pernoctarat ibi diem posterum commoraretur, Avillius, ut erat constitutum, simulat se aegrotare et testamentum facere velle. Oppianicus obsignatores ad eum, qui neque Asuvium neque Avillium nossent, adducit et illum Asuvium appellat. Ipse testamento Asuvi nomine obsignato discedit: Avillius ilico convalescit: Asuvius autem brevi illo tempore, quasi in hortulos iret, in harenarias quasdam extra portam Esquilinam perductus occiditur. Qui cum unum iam et alterum 38
diem desideraretur neque in eis locis ubi ex con-

6. *inire*, PF: *iniri*, STM. 8. *posse*, ω: *posse se*, Mommsen. 16. *ubi pernoctarat ibi*, Müller: *ubi pernoctaret ibi*, P: *ibi pernoctaret ibi*, ST (*et ibi*, FM: *et ibidem*, Lamb.). 22. *discedit*, ST: *disceditur*, PFM (*appellat ipse. Testamento ... disceditur* many edd.). 23. *iret*, ω: *iretur*, conj. Müller.

suetudine quaerebatur inveniretur, et Oppianicus in foro Larinatium dictitaret nuper se et suos amicos testamentum eius obsignasse, liberti Asuvi et non nulli amici, quod eo die quo postremum Asuvius visus erat Avillium cum eo fuisse et a multis visum esse constabat, in eum invadunt et hominem ante pedes Q. Manli, qui tum erat triumvir, constituunt; atque ille continuo, nullo teste, nullo indice, recentis maleficii conscientia perterritus omnia ut a me paulo ante dicta sunt exponit, Asuviumque a
39 sese consilio Oppianici interfectum fatetur. Extrahitur domo latitans Oppianicus a Manlio: index Avillius ex altera parte coram tenetur. Hic quid iam reliqua quaeritis? Manlium plerique noratis: non ille honorem a pueritia, non studia virtutis, non ullum existimationis bonae fructum umquam cogitarat: ex petulanti atque improbo scurra in discordiis civitatis ad eam columnam ad quam multorum saepe conviciis perductus erat tum suffragiis populi pervenerat. Itaque rem cum Oppianico transigit: pecuniam ab eo accipit, causam et susceptam et tam manifestam relinquit. Ac tum in Oppianici causa crimen hoc Asuvianum cum testibus multis tum vero indicio Avilli comprobabatur: in quo alligatum Oppianici nomen primum esse constabat, —eius quem vos miserum atque innocentem falso iudicio circumventum esse dicitis.

8. *ille*, ω (Ramsay, Müller): *illic*, ST (Classen, Baiter, Kayser). 13. *quid iam*, ST: *iam quid*, ω. 17. *ex*, ST: *sed ex*, FMW. 20. *rem*, ω: *tum*, ST. 21. [*pecuniam ab eo accipit*], Hartman. 22. *tam*, ST: om. ω (cp. § 30, 7). *reliquit*, ST. 24. *in quo alligatum*, ST: *in quo inter allegatos*, FM (*alligatos*).

XIV. Quid? aviam tuam, Oppianice, Dinaeam, **40** cui tu es heres, pater tuus non manifesto necavit? ad quam cum adduxisset medicum illum suum, iam cognitum et saepe victorem, per quem interfecerat plurimos, mulier exclamat se ab eo nullo modo curari velle quo curante omnes suos perdidisset. Tum repente Anconitanum quendam, L. Clodium, pharmacopolam circumforaneum, qui casu tum Larinum venisset, adgreditur et cum eo duobus milibus HS, id quod ipsius tabulis tum est demonstratum, transigit. L. Clodius, qui properaret, cui fora multa restarent, simul atque introductus est rem confecit; prima potione mulierem sustulit, neque postea Larini punctum est temporis commoratus. Eadem hac Dinaea testamentum **41** faciente, cum tabulas prehendisset Oppianicus, qui gener eius fuisset, digito legata delevit; et cum id multis locis fecisset, post mortem eius, ne lituris coargui posset, testamentum in alias tabulas transscriptum signis adulterinis obsignavit. Multa praetereo consulto; etenim vereor ne haec ipsa nimium multa esse videantur; vos tamen similem sui eum fuisse in ceteris quoque vitae partibus existimare debetis. Illum tabulas publicas Larini censorias corrupisse decuriones universi iudicave-

4. [*per quem interfecerat plurimos*], Lambinus. 6. *curari velle*, ST: *velle curari*, ω. *omnes suos*, ST: *suos omnes*, ω. 8. *foranum*, ST: *circumforanum*, FM. 10. *duo milia*, STF. *tum*, om. ST. 11. *qui*, FMW: *cum*, ST (cp. § 23, 9, where ST wrongly give *cum* for *quod*). 19. *possit*, ST. 22. *similem sui eum* ST: *eum similem sui*. FM.

runt; cum illo nemo iam rationem, nemo rem ullam contrahebat; nemo illum ex tam multis cognatis et adfinibus tutorem umquam liberis suis scripsit; nemo illum aditu, nemo congressione, nemo sermone, nemo convivio dignum iudicavit; omnes aspernabantur, omnes abhorrebant, omnes ut aliquam immanem ac perniciosam bestiam pestem-
42 que fugiebant. Hunc tamen hominem tam audacem, tam nefarium, tam nocentem numquam accusasset Habitus, iudices, si id praetermittere suo salvo capite potuisset. Erat huic inimicus Oppianicus, erat, sed tamen erat vitricus; crudelis et huic infesta mater, at mater. Postremo nihil tam remotum ab accusatione quam Cluentius et natura et voluntate et instituta ratione vitae. Sed cum esset haec ei proposita condicio, ut aut iuste pieque accusaret aut acerbe indigneque moreretur, accusare, quoquo modo posset, quam illo modo emori maluit.

43 Atque ut hoc ita esse perspicere possitis, exponam vobis Oppianici facinus manifesto compertum atque deprehensum; ex quo simul utrumque, et huic accusare et illi condemnari necesse fuisse, intellegetis.

XV. Martiales quidam Larini appellabantur, ministri publici Martis atque ei deo veteribus institutis religionibusque Larinatium consecrati;

1. *nemo iam*, ST: *iam nemo*, ω: om. *iam*, Quint. ix. 3, 38. 5. *iudicavit*, ST: *iudicabat*, FMW, Müller. 10. *suo salvo capite*, ST: *salvo capite suo*, FMW. 12. *erat sed*, ω: *sed*, T[1]FW. 13. *at*, ST: *at tamen*, FM. 23. *illi*, ST b[2]: *illum*, ω (cp. *Oppianicum—Oppianico*, § 70, 10).

quorum cum satis magnus numerus esset, cumque item, ut in Sicilia permulti Venerii sunt, sic illi Larini in Martis familia numerarentur, repente Oppianicus eos omnes liberos esse civesque Romanos coepit defendere. Graviter id decuriones Larinatium cunctique municipes tulerunt; itaque ab Habito petiverunt ut eam causam susciperet publiceque defenderet. Habitus cum se ab omni eius modi negotio removisset, tamen pro loco, pro antiquitate generis sui, pro eo quod se non suis commodis sed etiam suorum municipum ceterorumque necessariorum natum esse arbitrabatur, tantae voluntati universorum Larinatium deesse noluit. Suscepta causa Romamque delata magnae **44**
cotidie contentiones inter Habitum et Oppianicum ex utriusque studio defensionis excitabantur. Erat ipse immani acerbaque natura Oppianicus: incendebat eius amentiam infesta atque inimica filio mater Habiti. Magni autem illi sua interesse arbitrabantur hunc a causa Martialium removeri. Suberat etiam alia causa maior, quae Oppianici hominis avarissimi atque audacissimi mentem maxime commovebat. Nam Habitus usque ad **45**
illius iudicii tempus nullum testamentum umquam fecerat: neque legare eius modi matri poterat

2. [*permulti*] *Venerii* [*sunt*], Hartman. 10. *non suis*, ST: *non solum suis*, F: *non suis solum*, M. 20. *removeri*, ST: *demovere*, FM: *demoveri*, Klotz. 22. *atque audacissimi*, ω: om. s^1: secl. Baiter: del. Kayser, Faussett. 25. *neque*, ST: *neque enim*, ω. *legare*, codd.: *legare quicquam* edd. (Baiter, Müller, after Arusianus).

animum inducere, neque testamento nomen omnino praetermittere parentis. Id cum Oppianicus sciret —neque enim erat obscurum—intellegebat Habito mortuo bona eius omnia ad matrem esse ventura, quae ab sese postea aucta pecunia maiore praemio, orbata filio minore periculo necaretur. Itaque his rebus incensus, qua ratione Habitum veneno tollere conatus sit cognoscite.

46 XVI. C. et L. Fabricii fratres gemini fuerunt ex municipio Aletrinati, homines inter se cum forma tum moribus similes, municipum autem suorum dissimillimi, in quibus quantus splendor sit, quam prope aequabilis, quam fere omnium constans et moderata ratio vitae, nemo vestrum, ut mea fert opinio, ignorat. His Fabriciis semper est usus Oppianicus familiarissime. Iam hoc fere scitis omnes, quantam vim habeat ad coniungendas amicitias studiorum ac naturae similitudo. Cum illi ita viverent ut nullum quaestum esse turpem arbitrarentur, cum omnis ab eis fraus, omnes insidiae circumscriptionesque adulescentium nascerentur, cumque essent vitiis atque improbitate omnibus noti, studiose, ut dixi, ad eorum se familiaritatem multis iam ante annis Oppianicus applic-
47 arat. Itaque tum sic statuit, per C. Fabricium (nam Lucius erat mortuus) insidias Habito comparare. Erat illo tempore infirma valetudine Habitus; utebatur autem medico non ignobili, spectato homine, Cleophanto; cuius servum Dio-

16. *Iam,* codd.: *Nam,* Madvig. 28. *non ignobili sed,* ST: *ignobili sed,* FMW: *non ignobili et,* Kayser: see note.

genem Fabricius ad venenum Habito dandum spe et pretio sollicitare coepit. Servus non incallidus et, ut res ipsa declaravit, frugi atque integer, sermonem Fabrici non est aspernatus: rem ad dominum detulit. Cleophantus autem cum Habito est collocutus. Habitus statim cum M. Baebio senatore, familiarissimo suo, communicavit; qui qua fide, qua prudentia, qua diligentia fuerit, meminisse vos arbitror. Ei placuit ut Diogenem Habitus emeret a Cleophanto, quo facilius aut comprehenderetur res eius indicio aut falsa esse cognosceretur. Ne multa, Diogenes emitur: venenum diebus paucis comparatur: multi viri boni cum ex occulto intervenissent, pecunia obsignata, quae ob eam rem dabatur, in manibus Scamandri liberti Fabriciorum deprehenditur.

Pro di immortales! Oppianicum quisquam his **48**
rebus cognitis circumventum esse dicet? XVII. Quis umquam audacior, quis nocentior, quis apertior in iudicium adductus est? Quod ingenium, quae facultas dicendi, quae a quoquam excogitata defensio huic uni crimini potuit obsistere? Simul et illud quis est qui dubitet, quin hac re comperta manifestoque deprehensa aut obeunda mors Cluentio aut suscipienda accusatio fuerit?

Satis esse arbitror demonstratum, iudices, eis **49**
criminibus accusatum esse Oppianicum uti honeste

3. *et*, ST: *sed*, ω. 8. *diligentia*, ST: *dignitate*, ω. 12. *multa*, ST: *multis*, ω. 13. *comparatur*, ST, Sylvius, and most edd.: om. FM. 14. *pecunia*, ST: *pecuniaque*, ω. 15. *ob*, STFM: *ad*, dett. (cp. § 135). 24. *manifestoque*, ω (cp. § 40, § 43): *manifesteque*, ST.

absolvi nullo modo potuerit: cognoscite nunc ita reum citatum esse illum, ut re semel atque iterum praeiudicata condemnatus in iudicium venerit. Nam Cluentius, iudices, primum nomen eius detulit cuius in manibus venenum deprehenderat: is erat libertus Fabriciorum Scamander. Integrum consilium, iudicii corrupti nulla suspicio: simplex in iudicium causa, certa res, unum crimen adlatum est. Hic tum C. Fabricius, is de quo ante dixi—qui liberto damnato sibi illud impendere periculum videret—quod mihi cum Aletrinatibus vicinitatem et cum plerisque eorum magnum usum esse sciebat, frequentes eos ad me domum adduxit; qui quamquam de homine sicut necesse erat existimabant, tamen, quod erat ex eodem municipio, suae dignitatis esse arbitrabantur eum quibus rebus possent defendere; idque a me ut facerem et ut causam Scamandri susciperem petebant, in qua
50 causa patroni omne periculum continebatur. Ego, qui neque illis talibus viris ac tam amantibus mei rem possem ullam negare neque illud crimen tantum ac tam manifestum esse arbitrarer—sicut ne illi quidem ipsi qui mihi tum illam causam commendabant arbitrabantur,—pollicitus eis sum me omnia quae vellent esse facturum.

XVIII. Res agi coepta est: citatus est Scamander reus. Accusabat P. Cannutius, homo in primis ingeniosus et in dicendo exercitatus; accusabat autem

10. *liberto damnato,* del. Hartman. *illud,* codd.: *idem* or *illud idem,* Lehmann (*Hermes,* 1880, p. 571). 23. *quidem ipsi,* ω: *ipsi quidem,* ST. 24. *eis,* om. ST. (as § 63).

ille quidem Scamandrum verbis tribus VENENUM
ESSE DEPREHENSUM; omnia tela totius accusa-
tionis in Oppianicum coniciebantur, aperiebatur
causa insidiarum, Fabriciorum familiaritas com-
memorabatur, hominis vita et audacia proferebatur,
denique omnis accusatio varie graviterque tractata
ad extremum manifesta veneni deprehensione con-
clusa est. Hic ego tum ad respondendum surrexi, **51**
qua cura, di immortales! qua sollicitudine animi!
quo timore! Semper equidem magno cum metu
incipio dicere: quotienscumque dico, totiens mihi
videor in iudicium venire non ingenii solum, sed
etiam virtutis atque officii, ne aut id profiteri
videar quod non possim [implere] quod est impu-
dentiae, aut non id efficere quod possim, quod est
aut perfidiae aut neglegentiae. Tum vero ita sum
perturbatus ut omnia timerem: si nihil dixissem,
ne infantissimus, si multa in eius modi causa dixis-
sem, ne impudentissimus existimarer. XIX. Collegi
me aliquando et ita constitui, fortiter esse agendum;
illi aetati qua tum eram solere laudi dari, etiam si
in minus firmis causis hominum periculis non
defuissem. Itaque feci: sic pugnavi, sic omni
ratione contendi, sic ad omnia confugi, quantum
ego adsequi potui, remedia ac perfugia causarum,
ut hoc, quod timide dicam, consecutus sim, ne quis
illi causae patronum defuisse arbitraretur. Sed ut **52**
quidquid ego apprehenderam, statim accusator

1. *quidem*, om. T et al. 14. [*implere*], om. ST: *perficere*, conj. Reid. Qy. *praestare?* 15. *non id*, ST: *id non*, ω. 28. *quidquid*, codd.: *quidque*, Baiter.

extorquebat e manibus. Si quaesiveram quae inimicitiae Scamandro cum Habito, fatebatur nullas fuisse, sed Oppianicum, cuius ille minister fuisset, huic inimicissimum fuisse atque esse dicebat. Sin autem illud egeram, nullum ad Scamandrum morte Habiti venturum emolumentum fuisse, concedebat, sed ad uxorem Oppianici, hominis in uxoribus necandis exercitati, omnia bona Habiti ventura fuisse dicebat. Cum illa defensione usus essem, quae in libertinorum causis honestissima semper existimata est, Scamandrum patrono esse probatum, fatebatur, sed quaerebat cui probatus esset ipse
53 patronus. Cum ego pluribus verbis in eo commoratus essem, Scamandro insidias factas esse per Diogenem constitutumque inter eos alia de re fuisse, ut medicamentum, non venenum Diogenes adferret, hoc cuivis usu venire posse, quaerebat cur in eius modi locum, tam abditum, cur solus, cur cum obsignata pecunia venisset. Denique hoc loco causa testibus, honestissimis hominibus, premebatur. M. Baebius de suo consilio Diogenem emptum, se praesente Scamandrum cum veneno pecuniaque deprehensum esse dicebat; P. Quintilius Varus, homo summa religione et summa auctoritate praeditus, de insidiis quae fierent Habito, et de sollicitatione Diogenis recenti re secum Cleophantum
54 collocutum esse dicebat. Atque in illo iudicio cum

2. *cum Habito*, codd.: *cum Habito fuissent*, Kayser. 6. *fuisse*, ST: *esse*, ω. 14. *insidias factas*, ST: *factas insidias*, FMW. 18. *tam abditum* has been suspected as an adscript. 23. *Quintius* or *Quinctius*, codd.: *Quintilius*, edd.

Scamandrum nos defendere videremur, verbo ille reus erat, re quidem vera et periculo tota accusatione Oppianicus. Neque id obscure ferebat nec dissimulare ullo modo poterat: aderat frequens, advocabat, omni studio gratiaque pugnabat; postremo — id quod maximo malo illi causae fuit — hoc ipso in loco, quasi reus ipse esset, sedebat. Oculi omnium iudicum non in Scamandrum, sed in Oppianicum coniciebantur; timor eius, perturbatio, suspensus incertusque vultus, crebra coloris mutatio, quae erant antea suspiciosa, haec aperta et manifesta faciebant. XX. Cum in consilium iri oporteret, **55** quaesivit ab reo C. Iunius quaesitor, ex lege illa Cornelia quae tum erat, clam an palam de se sententiam ferri vellet: de Oppianici sententia responsum est, quod is Habiti familiarem Iunium esse dicebat, clam velle ferri. Itum est in consilium. Omnibus sententiis praeter unam, quam suam Staienus esse dicebat, Scamander prima actione condemnatus est. Quis tum erat omnium qui Scamandro condemnato non iudicium de Oppianico factum esse arbitraretur? Quid est illa damnatione iudicatum nisi venenum id, quod Habito daretur, esse quaesitum? quae porro tenuissima suspicio collata in Scamandrum est aut conferri potuit, ut is sua sponte necare voluisse Habitum putaretur?

Atque hoc tum iudicio facto et Oppianico re et **56** existimatione iam, lege et pronuntiatione nondum condemnato, tamen Habitus Oppianicum reum

2. *tota*, ST: *et tota*, ω. 11. *et*, ST: *ac*, ω.

statim non fecit. Voluit cognoscere utrum iudices in eos solos essent severi quos venenum habuisse ipsos comperissent, an etiam consilia conscientiasque eius modi facinorum supplicio dignas iudicarent. Itaque C. Fabricium, quem propter familiaritatem Oppianici conscium illi facinori fuisse arbitrabatur, reum statim fecit, utique ei locus primus constitueretur propter causae coniunctionem impetravit. Hic tum Fabricius non modo ad me meos vicinos et amicos Aletrinates non adduxit, sed ipse eis neque defensoribus uti postea neque laudatoribus
57 potuit; rem enim integram hominis non alieni quamvis suspiciosam defendere humanitatis esse putabamus, iudicatam labefactare conari impudentiae. Itaque tum ille inopia et necessitate coactus in causa eius modi ad Caepasios fratres confugit, homines industrios atque eo animo ut quaecumque dicendi potestas esset data in honore atque in beneficio ponerent. XXI. Iam hoc prope iniquissime comparatum est quod in morbis corporis, ut quisque est difficillimus, ita medicus nobilissimus atque optimus quaeritur, in periculis capitis, ut quaeque causa difficillima est, ita deterrimus obscurissimusque patronus adhibetur; nisi forte hoc causae est, quod medici nihil praeter artificium, oratores etiam aucto-
58 ritatem praestare debent. Citatur reus, paucis verbis accusat, ut de re iudicata, Cannutius: incipit longo

19. *Iam*, codd.: *nam.* conj. Pluygers, Madvig (cp. § 46, 16). 24. *nisi forte ... debent*, ST b²: om. FM. 26. (After *reus*), *agitur causa*, FMW: om. S: T inserts between *paucis* and *verbis*. An obvious index mark: see Notes.

et alte petito prooemio respondere maior Caepasius. Primo attente auditur eius oratio. Erigebat animum iam demissum et oppressum Oppianicus; gaudebat ipse Fabricius; non intellegebat animos iudicum non illius eloquentia, sed defensionis impudentia commoveri. Postea quam de re coepit dicere, ad ea quae erant in causa addebat etiam ipse nova quaedam vulnera, ut, quamquam sedulo faciebat, tamen interdum non defendere, sed praevaricari accusationi videretur. Itaque cum callidissime se dicere putaret et cum illa verba gravissima ex intimo artificio deprompsisset, 'Respicite, iudices, hominum fortunas, respicite dubios variosque casus, respicite C. Fabrici senectutem'—cum hoc 'respicite' ornandae orationis causa saepe dixisset, respexit ipse: at C. Fabricius a subselliis demisso capite discesserat. Hic iudices ridere, stomachari **59** atque acerbe ferre patronus causam sibi eripi et se cetera de illo loco 'Respicite, iudices,' non posse dicere; nec quicquam propius est factum quam ut illum persequeretur et collo obtorto ad subsellia reduceret, ut reliqua posset perorare. Ita tum Fabricius primum suo iudicio, quod est gravissimum, deinde legis vi et sententiis iudicum est condemnatus.

XXII. Quid est quod iam de Oppianci persona causaque plura dicamus? Apud eosdem iudices reus est factus, cum his duobus praeiudiciis iam damnatus

8. *ut ... videretur*, ST : *hoc ... videbatur*, ω. 10. *accusationi*, ST : many edd. bracket or omit. 22. *Ita*, ST b², cod. S. Vict.: *iam*, ω. 26. *persona causaque*, ST : *causa*, ω.

esset; ab isdem autem iudicibus qui Fabriciorum damnatione de Oppianico iudicarant, locus ei primus est constitutus; accusatus est criminibus gravissimis, et eis quae a me breviter dicta sunt, et praeterea multis quae nunc ego omnia omitto; accusatus est apud eos qui Scamandrum ministrum Oppianici, C. Fabricium conscium maleficii condemnarant.
60 Utrum, per deos immortales! magis est mirandum, quod is condemnatus est, an quod omnino respondere ausus est? Quid enim illi iudices facere potuerunt? qui si innocentes Fabricios condemnassent, tamen in Oppianico sibi constare et superioribus consentire iudiciis debuerunt. An vero illi sua per se ipsi iudicia rescinderent, cum ceteri soleant in iudicando ne ab aliorum iudiciis discrepent providere? et ei qui Fabrici libertum, quia minister in maleficio fuerat, patronum, quia conscius, condemnassent, ipsum principem atque architectum sceleris absolverent? et qui ceteros nullo praeiudicio facto tamen ex ipsa causa condemnassent, hunc, quem bis iam
61 condemnatum acceperant, liberarent? Tum vero illa iudicia senatoria, non falsa invidia sed vera atque insigni turpitudine notata atque operta dedecore et infamia, defensioni locum nullum reliquissent. Quid enim tandem illi iudices responderent, si qui ab eis quaereret: 'Condemnastis Scamandrum: quo crimine?' 'Nempe, quod Habitum per servum medici veneno necare voluisset.' 'Quid Habiti

5. *nunc ego omnia*, S: *ego omnia nunc*, FM: *ego omnia*, T: *nunc omnia*, W. 12. *consentire*, ST: *constare*, F: *consistere*, M. 17. *conscius esset*, ST. 28. *voluisset quid*, codd.: *voluit ecquid*, Madvig.

morte Scamander consequebatur?' 'Nihil, sed administer erat Oppianici.' 'Et condemnastis C. Fabricium: quid ita?' 'Quia, cum ipse familiarissime Oppianico usus, libertus autem eius in maleficio deprehensus esset, illum expertem eius consilii fuisse non probabatur.' Si igitur ipsum Oppianicum bis suis iudiciis condemnatum absolvissent, quis tantam turpitudinem iudiciorum, quis tantam inconstantiam rerum iudicatarum, quis tantam libidinem iudicum ferre potuisset?

Quod si hoc videtis, quod iam hac omni oratione **62**
patefactum est, illo iudicio reum condemnari, praesertim ab isdem iudicibus qui duo praeiudicia fecissent, necesse fuisse, simul illud videatis necesse est, nullam accusatori causam esse potuisse cur iudicium vellet corrumpere. XXIII. Quaero enim de te, T. Acci, relictis iam ceteris argumentis omnibus, num Fabricios quoque innocentes condemnatos existimes, num etiam illa iudicia pecunia corrupta esse dicas, quibus in iudiciis alter a Staieno solo absolutus est, alter etiam ipse se condemnavit. Age, si nocentes, cuius maleficii? num quid praeter venenum quaesitum, quo Habitus necaretur, obiectum est? num quid aliud in illis iudiciis versatum est praeter hasce insidias Habito ab Oppianico per Fabricium factas? Nihil: nihil, inquam, aliud, iudices, reperietis. Exstat memoria, sunt tabulae publicae: redargue

2. *Et*, ST: om. ω. 15. *accusatori causam esse*, ω: *accusatoris esse causam*, ST. 16. *de te*, S: *abs te*, ω. 17. *Acci*, S: *Atti*, ω. 20. *quibus in iudiciis*, ST b²: *quib. iud.*, ω. 25. *Fabricium*, ST: *Fabricios*, ω.

me, si mentior: testium dicta recita: doce in illorum iudiciis quid praeter hoc venenum Oppianici non modo in criminis, sed in male dicti loco sit obiectum.

63 Multa dici possunt qua re ita necesse fuerit iudicari, sed ego occurram exspectationi vestrae, iudices. Nam etsi a vobis sic audior ut numquam benignius neque attentius quemquam auditum putem, tamen vocat me alio iam dudum tacita vestra exspectatio, quae mihi obloqui videtur: 'quid ergo? negasne illud iudicium esse corruptum?' Non nego, sed ab hoc corruptum non esse confirmo. 'A quo igitur est corruptum?' Opinor, primum, si incertum fuisset quisnam exitus illius iudicii futurus esset, veri similius tamen esset eum potius corrupisse qui metuisset ne ipse condemnaretur, quam illum qui veritus esset ne alter absolveretur; deinde cum esset non dubium quid iudicari necesse esset, eum certe potius qui sibi alia ratione diffideret, quam eum qui omni ratione confideret; postremo certe potius illum qui bis apud eos iudices offendisset,
64 quam eum qui bis causam eis probavisset. Unum quidem certe nemo erit tam inimicus Cluentio qui mihi non concedat, si constet corruptum illud esse iudicium, aut ab Habito aut ab Oppianico esse

3. *locum*, ST. 6. *etsi*, ST: *si*, ω. 10. *iudicium esse corruptum*, ω, and Quint. ix. 2, 51: *iud. corr. esse*, ST. 17. *non*, ST: *nemini*, ω: *cum non esset*, J. S. Reid. 18. *alia*, codd.: *aliqua*, some edd. 21. *bis causam eis*, ω: *bis causam*, ST (om. *eis*, as § 50): *bis eis* (iis) *causam*, some codd., and Baiter. 22. *inimicus*, ST, and Quint. v. 10, 68: *iniquus*, FMW. 23. *esse iudicium*, ω, and Quint. l.c.: *iudicium esse*, ST.

corruptum: si doceo non ab Habito, vinco ab Oppianico; si ostendo ab Oppianico, purgo Habitum. Qua re, etsi satis docui rationem nullam huic corrumpendi iudicii fuisse, ex quo intellegitur ab Oppianico esse corruptum, tamen de illo ipso separatim cognoscite.

XXIV. Atque ego illa non argumentabor, quae sunt
gravia vehementer, eum corrupisse qui in periculo
fuerit, eum qui metuerit, eum qui spem salutis in
alia ratione non habuerit, eum qui semper singulari
fuerit audacia. Multa sunt eius modi; verum cum
habeam rem non dubiam sed apertam atque mani-
festam, enumeratio singulorum argumentorum non
est necessaria. Dico C. Aelio Staieno iudici pecu- 65
niam grandem Statium Albium ad corrumpendum
iudicium dedisse. Num quis negat? Te, Oppianice,
appello, te, T. Acci, quorum alter eloquentia damna-
tionem illam, alter tacita pietate deplorat: audete
negare ab Oppianico Staieno iudici pecuniam datam,
negate, inquam, in eo loco. Quid tacetis? an negare
non potestis quod repetistis, quod confessi estis,
quod abstulistis? Quo tandem igitur ore mentionem
corrupti iudicii facitis, cum ab ista parte iudici
pecuniam ante iudicium datam, post iudicium erep-
tam esse fateamini? Quonam igitur haec modo
gesta sunt? Repetam paulo altius, iudices, et omnia 66
quae in diuturna obscuritate latuerunt sic aperiam
ut ea cernere oculis videamini. Vos quaeso—ut
adhuc me attente audistis—item quae reliqua sunt

12. *habes*, ST. 20. *in eo*, many codd. and edd.: *meo*, STF. *an*, ST: *at*, ω. 29. *item*, ω: *ut item*, ST.

audiatis: profecto nihil a me dicetur quod non dignum hoc conventu et silentio, dignum vestris studiis atque auribus esse videatur.

Nam ut primum Oppianicus ex eo quod Scamander reus erat factus quid sibi impenderet coepit suspicari, statim se ad hominis egentis, audacis, in iudiciis corrumpendis exercitati, tum autem iudicis, Staieni familiaritatem applicavit. Ac primum Scamandro reo tantum donis muneribusque perfecerat ut eo fautore uteretur cupidiore quam fides iudicis postul-
67 abat. Post autem cum esset Scamander unius Staieni sententia absolutus, patronus autem Scamandri ne sua quidem sententia liberatus, acrioribus saluti suae remediis subveniendum putavit. Tum ab Staieno, sicut ab homine ad excogitandum acutissimo, ad audendum impudentissimo, ad efficiendum acerrimo—haec enim ille et aliqua ex parte habebat et maiore ex parte se habere simulabat—auxilium capiti ac fortunis suis petere coepit. XXV. Iam hoc non ignoratis, iudices, ut etiam bestiae fame monitae plerumque ad eum locum ubi pastae sint
68 aliquando revertantur. Staienus ille biennio ante, cum causam bonorum Safini Atellae recepisset, sescentis milibus nummum se iudicium corrupturum esse dixerat: quae cum accepisset a pupillo suppressit, iudicioque facto nec Safinio nec bonorum

8. *applicavit*, M: *se applicavit*, STF (see Notes). 9. *donis muneribusque* (see Notes): *donis datis muneribusque*, FMW (Faussett): *datis muneribus*, ST and edd. 10. *fautore*, ST: *auctore*, ω. 20. *Nam*, Pluygers. 21. *monitae*, ST: *dominante*, ω (cp. note on *domo*, § 27). *sint*, ω: *sunt*, S.

emptoribus reddidit. Quam cum pecuniam profudisset et sibi nihil non modo ad cupiditates suas, sed ne ad necessitatem quidem reliquisset, statuit ad easdem esse sibi praedas ac suppressiones iudiciales revertendum. Itaque cum Oppianicum iam perditum et duobus iugulatum praeiudiciis videret, promissis suis eum excitavit abiectum et simul saluti desperare vetuit: Oppianicus autem orare hominem coepit ut sibi rationem ostenderet iudicii corrumpendi. Ille autem, quem ad modum ex ipso **69**
Oppianico postea est auditum, negavit quemquam esse in civitate praeter se qui id efficere possit. Sed primo gravari coepit, quod aedilitatem se petere cum hominibus nobilissimis et invidiam atque offensionem timere dicebat; post exoratus initio permagnam pecuniam poposcit; deinde ad id pervenit quod confici potuit, HS sescenta quadraginta milia deferri ad se domum iussit. Quae pecunia simul atque ad eum delata est, homo impurissimus statim coepit in eius modi mente et cogitatione versari, nihil esse suis rationibus utilius quam Oppianicum condemnari; illo absoluto pecuniam illam aut iudicibus dispertiendam aut ipsi esse reddundam; damnato repetiturum esse neminem. Itaque rem excogitat singularem. Atque haec, **70**
iudices, quae vera dicuntur a nobis, facilius credetis si cum animis vestris longo intervallo recordari C.

7. *suis eum*, ST: *eum suis*, ω. 8. *autem*, ST: om. ω (cp. § 143). 12. *possit*, codd.: *posset*, many edd. 17. *potuit*, ST: *potuit et*, FMW. 20. *eiusmodi*, codd.: *huiusmodi*, conj. Müller (and at § 179, 28). 26. *vera*, ST: *vere*, ω.

Staieni vitam et naturam volueritis; nam perinde ut opinio est de cuiusque moribus, ita quid ab eo factum aut non factum sit existimari potest. XXVI. Cum esset egens, sumptuosus, audax, callidus, perfidiosus, et cum domi suae miserrimis in locis et inanissimis tantum nummorum positum videret, ad omnem malitiam et fraudem versare suam mentem coepit: 'Ego dem iudicibus? mihi ipsi igitur praeter periculum et infamiam quid quaeretur? Nihil excogitem quam ob rem Oppianicum damnari necesse sit? Quid tandem,—nihil enim est quod non fieri possit,—si quis eum forte casus ex periculo eripuerit, nonne reddundum est? Praecipitantem igitur impel-
71 lamus' inquit 'et perditum prosternamus.' Capit hoc consilii, ut pecuniam quibusdam iudicibus levissimis polliceatur, deinde eam postea supprimat, ut, quoniam graves homines sua sponte severe iudicaturos putabat, eos qui leviores erant destitutione iratos Oppianico redderet. Itaque, ut erat semper praeposterus atque perversus, initium facit a Bulbo, et eum, quod iam diu nihil quaesierat, tristem atque oscitantem leviter impellit. 'Quid tu?' inquit, 'ecquid me adiuvas, Bulbe, ne gratis rei publicae serviamus?' Ille vero, simul atque hoc audivit 'ne gratis,' 'Quo

3. *aut*, ST: *et*, ω. 5. *miserrimis* (*misserimus*, T et al.) *in locis et inanissimis*, SFM, cod. S. Vict., et al.: *miserrimus in locis inanissimis*, Classen: *miserrimus in loculis* (Ernesti) *ante inanissimis*, Kayser. 8. *Ego dem* T: *eo ego dem* (with *eo* deleted by same hand), S: *deme*, FM: *demne*, Lambinus. 10. *Oppianicum*, ST: *Oppianico*, ω (cp. § 43, 23). 11. *non fieri*, ST: *fieri non*, FMW (cp. § 113). 15. *consilii*, ST: *consilium*, ω.

voles,' inquit 'sequar: sed quid adfers?' Tum ei HS quadraginta milia, si esset absolutus Oppianicus, pollicetur, et eum ut ceteros appellet quibuscum loqui consuesset rogat. Atque etiam ipse conditor totius negotii **72**
Guttam aspergit huic Bulbo; itaque minime amarus eis visus est qui aliquid ex eius sermone speculae degustarant. Unus et alter dies intercesserat cum res parum certa videbatur: sequester et confirmator pecuniae desiderabatur. Tum appellat hilaro vultu hominem Bulbus, ut blandissime potest: 'Quid tu,' inquit 'Paete?'—hoc enim sibi Staienus cognomen ex imaginibus Aeliorum delegerat, ne, si se Ligurem fecisset, nationis magis quam generis uti cognomine videretur—'qua de re mecum locutus es, quaerunt a me ubi sit pecunia.' Hic ille planus improbissimus, quaestu iudiciario pastus, qui illi pecuniae quam condiderat spe iam atque animo incubaret, contrahit frontem—recordamini faciem atque illos eius fictos simulatosque vultus—et, qui esset totus ex fraude et mendacio factus, quique ea vitia quae a natura habebat etiam studio atque artificio quodam malitiae condivisset, pulchre adseverat sese ab Oppianico destitutum, atque hoc addit testimonii, sua illum sententia, cum palam omnes laturi essent, condemnatum iri. XXVII. Manarat sermo in consilio pecuniae **73**
quandam mentionem inter iudices esse versatam:

1. *HS*, S: om. ω. 6. *iis ... degustarant*, ST: *is ... degustarat*, ω. 9. *hilaro* ST: *hilari*, ω. 10. *blandissime*, ω: *placidissime*, ST. 13. *magis quam*, ST: *magis suae quam*, ω. 19. I have ventured to remove entirely from the text the words *queritur se ab Oppianico destitutum* which occur in all MSS. after *simulatosque vultus* (see Notes).

res neque tam fuerat occulta quam erat occultanda, neque tam erat aperta quam rei publicae causa aperienda. In ea obscuritate ac dubitatione omnium Cannutio, perito homini, qui quodam odore suspicionis Staienum corruptum esse sensisset neque dum rem perfectam arbitraretur, placuit repente pronuntiari DIXERUNT. Hic tum Oppianicus non magno opere pertimuit; rem a Staieno perfectam esse
74 arbitrabatur. In consilium erant ituri iudices XXXII; sententiis XVI absolutio confici poterat; quadragena milia nummum in singulos iudices distributa eum numerum sententiarum conficere debebant, ut ad cumulum spe maiorum praemiorum ipsius Staieni sententia septima decima accederet. Atque etiam casu tum, quod illud repente erat factum, Staienus ipse non aderat; causam nescio quam apud iudicem defendebat. Facile hoc Habitus patiebatur, facile Cannutius, at non Oppianicus neque patronus eius L. Quinctius; qui cum esset illo tempore tribunus plebis, convicium C. Iunio iudici quaestionis maximum fecit ut ne sine illo in consilium iretur; cumque id ei per viatores consulto neglegentius agi videretur, ipse e publico iudicio ad privatum Staieni iudicium profectus est et illud pro potestate dimitti iussit; Staienum ipse ad
75 subsellia adduxit. Consurgitur in consilium, cum sententias Oppianicus, quae tum erat potestas, palam ferri velle dixisset, ut Staienus scire posset quid cuique deberetur. Varia iudicum genera: nummarii

6. *pronuntiare,* most codd. (see on *reticeri,* § 18). 21. *illo,* P: *Aelio,* T: *Staieno,* ω. 29. *deberetur,* ω: *deberet,* ST.

pauci, sed omnes irati. Ut qui accipere in campo consuerunt eis candidatis quorum nummos suppressos esse putant inimicissimi solent esse, sic eius modi iudices infesti tum reo venerant; ceteri nocentissimum esse arbitrabantur, sed exspectabant sententias eorum quos corruptos esse putabant, ut ex eis constituerent a quo iudicium corruptum videretur. XXVIII. Ecce tibi eius modi sortitio ut in primis Bulbo et Staieno et Guttae esset iudicandum! Summa omnium exspectatio quidnam sententiae ferrent leves ac nummarii iudices. Atque illi omnes sine ulla dubitatione condemnant. Hic tum iniectus **76**
est hominibus scrupulus et quaedam dubitatio quidnam esset actum. Deinde homines sapientes et ex vetere illa disciplina iudiciorum, qui neque absolvere hominem nocentissimum possent, neque eum de quo esset orta suspicio pecunia oppugnatum, re illa incognita, primo condemnare vellent, non liquere dixerunt. Non nulli autem severi homines—qui hoc statuerunt, quo quisque animo quid faceret spectari oportere—etsi alii pecunia accepta verum iudicabant, tamen nihilo minus se superioribus suis iudiciis constare putabant oportere; itaque damnarunt. Quinque omnino fuerunt qui illum vestrum innocentem Oppianicum sive imprudentia sive misericordia sive aliqua suspicione sive ambitione adducti absolverunt.

6. *corruptos esse*, P: *corruptos*, ω. 8. *sortitio fuit ut*, ST. 14. *actum*, P and ω: *factum*, ST. *et*, P: om. ω. 15. *qui*, PST: om. ω. 20. *statuerent*, Madvig. Qy. *statuerant?* 21. *iudicarent* or *iudicassent*, Ernesti.

77 Condemnato Oppianico statim L. Quinctius, homo maxime popularis, qui omnes rumorum et contionum ventos colligere consuesset, oblatam sibi facultatem putavit ut ex invidia senatoria posset crescere, quod eius ordinis iudicia minus iam probari populo arbitrabatur. Habetur una atque altera contio vehemens et gravis: accepisse pecuniam iudices ut innocentem reum condemnarent, tribunus plebis clamitabat; agi fortunas omnium dicebat; nulla esse iudicia; qui pecuniosum inimicum haberet, incolumem esse neminem posse. Homines totius ignari negotii, qui Oppianicum numquam vidissent, virum optimum et hominem pudentissimum pecunia oppressum esse arbitrarentur, incensi suspicione rem in medium vocare coeperunt et causam illam totam
78 deposcere. Atque illo ipso tempore in aedes T. Anni, hominis honestissimi, necessarii et amici mei, noctu Staienus arcessitus ab Oppianico venit. Iam cetera nota sunt omnibus: ut cum illo Oppianicus egerit de pecunia, ut ille se redditurum esse dixerit, ut eum sermonem audierint omnem viri boni qui tum consulto propter in occulto stetissent, ut res patefacta et in forum prolata et pecunia omnis Staieno extorta atque erepta sit. XXIX. Huius Staieni persona populo iam nota atque perspecta ab nulla turpi suspicione abhorrebat. Suppressam esse ab eo pecuniam quam pro reo pronuntiasset, qui erant

9. *clamitabat*, ω: *clamabat*, P. 10. *esse iudicia*, PFMW: *iudicia esse*, ST. 14. *esse*, P: om. ω. 21. *eum sermonem audierint omnem*, P: *eorum sermonem omnem audierint*, ω. 23. *Staieno*, P: *a Staieno*, ω. 25. *ab*, P and ω: om. ST.

in contione non intellegebant, (neque enim docebantur); versatam esse in iudicio mentionem pecuniae sentiebant; innocentem reum condemnatum audiebant; Staieni sententia condemnatum videbant; non gratis id ab eo factum esse, quod hominem norant, iudicabant. Similis in Bulbo, in Gutta, in aliis non nullis suspicio consistebat. Itaque confiteor 79
—licet enim iam impune, hoc praesertim in loco, confiteri—quod Oppianici non modo vita, sed etiam nomen ante illud tempus populo ignotum fuisset, indignissimum porro videretur circumventum esse innocentem pecunia, hanc deinde suspicionem augeret Staieni improbitas et non nullorum eius similium iudicum turpitudo, causam autem ageret L. Quinctius, homo cum summa potestate praeditus, tum ad inflammandos animos multitudinis accommodatus, summam illi iudicio invidiam infamiamque esse conflatam; atque in hanc flammam recentem tum C. Iunium, qui illi quaestioni praefuerat, iniectum esse memini, et illum hominem aedilicium iam praetorem opinionibus *omnium* constitutum, non disceptatione dicendi, sed clamore hominum de foro atque adeo de civitate esse sublatum.

Neque me paenitet hoc tempore potius quam illo 80
causam A. Cluenti defendere. Causa enim manet eadem, quae mutari nullo modo potest: temporis iniquitas atque invidia recessit, ut quod in tempore mali fuit nihil obsit, quod in causa boni fuit prosit.

3. *condemnatum*, PMb: *condemnatum esse*, F. 15. *praeditus*, om. ST (cp. § 131, 16). 19. *esse iniectum*, ST. 21. *omnium* (see Notes). 22. *clamore hominum*, W: *clamore*, ST

Itaque nunc quem ad modum audiar sentio, non modo ab eis quorum iudicium ac potestas est, sed etiam ab illis quorum tantum est existimatio; at tum si dicerem, non audirer, non quod alia res esset, immo eadem, sed tempus aliud. XXX. Id adeo sic cognoscite. Quis tum auderet dicere nocentem condemnatum esse Oppianicum? quis nunc audet negare? Quis tum posset arguere ab Oppianico temptatum esse iudicium pecunia? quis id hoc tempore infitiari potest? Cui tum liceret docere Oppianicum reum factum esse tum denique cum duobus proximis praeiudiciis condemnatus esset? quis est qui id hoc tempore infirmare conetur?

81 Qua re invidia remota, quam dies mitigavit, oratio mea deprecata est, vestra fides atque aequitas a veritatis disceptatione reiecit, quid est praeterea quod in causa relinquatur? Versatam esse in iudicio pecuniam constat: ea quaeritur unde profecta sit, ab accusatore an ab reo. Dicit accusator haec: 'Primum gravissimis criminibus accusabam, ut nihil opus esset pecunia; deinde condemnatum adducebam, ut ne eripi quidem pecunia posset; postremo, etiam si absolutus fuisset, mearum tamen omnium fortunarum status incolumis maneret.' Quid contra reus? 'Primum ipsam multitudinem criminum et atrocitatem pertimescebam; deinde Fabriciis propter conscientiam mei sceleris condemnatis me esse condemnatum sentiebam; postremo

7. *audet*, ST: *id audet*, ω. 17. *esse*, om. ST. 19. *Dicit accusator*, ST: *Accusator dicit*, ω. 23. *fuisset*, ST: *esset*, ω (cp. § 145, 25).

in eum casum veneram ut omnis mearum fortunarum status unius iudicii periculo contineretur.'

82 Age, quoniam corrumpendi iudicii causas ille multas et graves habuit, hic nullam, profectio ipsius pecuniae requiratur. Confecit tabulas diligentissime Cluentius; haec autem res habet hoc certe, ut nihil possit neque additum neque detractum de re familiari latere. Anni sunt octo cum ista causa in ista meditatione versatur, cum omnia quae ad eam rem pertinent et ex huius et ex aliorum tabulis agitatis, tractatis, inquiritis: cum interea Cluentianae pecuniae vestigium nullum invenitis. Quid? Albiana pecunia vestigiisne nobis odoranda est an ad ipsum cubile vobis ducibus venire possumus? Tenentur uno in loco HS IↃCXL; tenentur apud hominem audacissimum; tenentur apud iudicem. 83 Quid vultis amplius? At enim Staienus non fuit ab Oppianico, sed a Cluentio ad iudicium corrumpendum constitutus. Cur eum, cum in consilium iretur, Cluentius et Cannutius abesse patiebantur? Cur, cum in consilium mittebant, Staienum iudicem cui, quod *tu dicis*, pecuniam dederant non requirebant; Oppianicus querebatur; Quinctius flagitabat; sine Staieno ne in consilium iretur, tribunicia potestate effectum est? At condemnavit. Hanc enim condemnationem dederat obsidem Bulbo et ceteris, ut destitutus ab

9. *quae*, ST: *quae nunc*, ω. Qy. *quaecunque?* 14. *ducibus*, ω: *iudicibus*, ST: *indicibus*, Nettleship (cp. *sine ullo duce sine indice*, Verr. ii. 1, § 105). 20. *cur*, om. FM. 21. *cui quod tu dicis* is my conj. (see Notes): *cui quod*, S: *quod*, T: *cui*, ω: *qui*, Classen, Baiter. 23. *querebatur*, STM: *quaerebat*, F.

Oppianico videretur. Qua re si istinc causa corrumpendi iudicii, si istinc pecunia, istinc Staienus, istinc denique omnis fraus et audacia est, hinc pudor, honesta vita, nulla suspicio pecuniae, nulla corrumpendi iudicii causa, patimini veritate patefacta atque omni errore sublato eo transire illius turpitudinis infamiam ubi cetera maleficia consistunt: ab eo invidiam discedere aliquando ad quem numquam accessisse culpam videtis.

84 XXXI. At enim pecuniam Staieno dedit Oppianicus non ad corrumpendum iudicium, sed ad conciliationem gratiae. Tene hoc, Acci, dicere, tali prudentia, etiam usu atque exercitatione praeditum! Sapientissimum esse dicunt eum cui quod opus sit ipsi veniat in mentem; proxime accedere illum qui alterius bene inventis obtemperet. In stultitia contra est: minus enim stultus est is cui nihil in mentem venit, quam ille qui quod stulte alteri venit in mentem comprobat. Istam conciliationem gratiae Staienus tum recenti re, cum faucibus premeretur, excogitavit; sive, ut homines tum loquebantur, a P. Cethego admonitus, istam dedit 'conciliationis'
85 et 'gratiae' fabulam. Nam fuisse hunc tum hominum sermonem recordari potestis: Cethegum, quod hominem odisset et quod eius improbitatem versari in re publica nollet et quod videret eum qui se ab reo pecuniam, cum iudex esset, clam atque extra ordinem accepisse confessus esset, salvum esse non

5. *patiamini*, T. 21. Mommsen conj. *sive ipse sive ut*, omitting (with ST and most edd.) *istam dedit conciliationis et gratiae fabulam*, in what follows. 22. *dedit*. Qy. *edidit?* 23. *tum*, ST: om. ω.

posse, minus ei fidele consilium dedisse. In hoc si improbus Cethegus fuit, videtur mihi adversarium removere voluisse; sin erat eius modi causa ut Staienus nummos se accepisse negare non posset, nihil autem erat periculosius nec turpius quam ad quam rem accepisset confiteri, non est consilium Cethegi reprehendendum. Verum alia causa tum Staieni fuit, **86**
alia nunc, Acci, tua est. Ille, cum re premeretur, quodcumque diceret, honestius diceret quam si quod erat factum fateretur; te vero illud idem, quod tum explosum et eiectum est, nunc rettulisse demiror. Qui enim poterat tum in gratiam redire cum Oppianico Cluentius? Haerebat in tabulis publicis reus et accusator: condemnati erant Fabricii: nec elabi alio accusatore poterat Albius nec sine ignominia calumniae relinquere accusationem Cluentius.

XXXII. An ut praevaricaretur? Iam id quoque ad **87**
corrumpendum iudicium pertinet. Sed quid opus erat ad eam rem iudice sequestre? et omnino quam ob rem tota ista res per Staienum potius, hominem ab utroque alienissimum, sordidissimum, turpissimum, quam per bonum aliquem virum ageretur et amicum necessariumque communem? Sed quid ego haec pluribus quasi de re obscura disputo, cum ipsa pecunia quae Staieno data est numero ac summa sua non modo quanta fuerit, sed etiam ad quam

7. *fuit*, om. ST. 13. *qui cum matre* (after *Cluentius*) I have omitted from the text: *qui cum matre habebat simultates*, STF (see Notes). 17. *ut*, FMW: *iis*, ST (for *iit?*): *is*, Baiter. *Iam*, codd. (cp. xxi. ad init.): *nam*, most edd. 24. *disputo*, ST: *disputem*, ω. 26. *ad quam rem* data *fuerit*, F, Lambinus.

rem fuerit ostendat? Sedecim dico iudices, ut Oppianicus absolveretur, corrumpendos fuisse: ad Staienum sescenta quadraginta milia nummum esse delata. Si, ut tu dicis, gratiae conciliandae causa, quadraginta istorum accessio milium quid valet? si, ut nos dicimus, ut quadragena milia sedecim iudicibus darentur, non Archimedes melius potuit discribere.

88 At enim iudicia facta permulta sunt a Cluentio iudicium esse corruptum. Immo vero ante hoc tempus omnino ista ipsa res suo nomine in iudicium numquam est vocata. Ita multum agitata, ita diu iactata ista res est, ut hodierno die primum causa illa defensa sit, hodierno die primum veritas vocem contra invidiam his iudicibus freta miserit. Verum tamen ista multa iudicia quae sunt? Ego enim me ad omnia confirmavi et sic paravi ut docerem quae facta postea iudicia de illo iudicio dicerentur partim ruinae similiora aut tempestati quam iudicio et disceptationi fuisse, partim nihil contra Habitum valere, partim etiam pro hoc esse, partim esse eius modi ut neque appellata umquam iudicia sint neque ex-
89 istimata. Hic ego magis ut consuetudinem servem, quam quod vos non vestra hoc sponte faciatis, petam a vobis ut me, dum de his singulis disputo iudiciis, attente audiatis.

XXXIII. Condemnatus est C. Iunius, qui ei quaestioni praefuerat. Adde etiam illud, si placet: tum

6. *milia*, ST: *milia nummum*, ω. 7. *describere*, codd. 13. [*ista res*] Baiter, Kayser, Faussett. 25. *disputo iudices*, Garatoni, Klotz.

est condemnatus cum esset iudex quaestionis. Non
modo causae, sed ne legi quidem quicquam per
tribunum plebis laxamenti datum est: quo tempore
illum a quaestione ad nullum aliud rei publicae
munus abduci licebat, eo tempore ad quaestionem
ipse abreptus est. At ad quam quaestionem? vul-
tus enim vestri, iudices, me invitant ut quae reti-
cenda putaram libeat iam libere dicere. Quid? illa **90**
tandem quaestio aut disceptatio aut iudicium fuit?
Putabo fuisse. Dicat qui vult hodie de illo populo
concitato, cui tum populo mos gestus est, qua de
re Iunius causam dixerit: quemcumque rogaveris,
hoc respondebit, quod pecuniam acceperit, quod in-
nocentem circumvenerit. Est haec opinio. At, si
ita esset, hac lege accusatum oportuit qua accusatur
Habitus. At ipse ea lege quaerebat. Paucos dies
exspectasset Quinctius. At neque privatus accusare
nec sedata iam invidia volebat. Videtis igitur non
in causa, sed in tempore ac potestate spem omnem
accusatoris fuisse. Multam petivit. Qua lege? **91**
Quod in legem non iurasset, quae res nemini um-
quam fraudi fuit, et quod C. Verres, praetor urbanus,
homo sanctus et diligens, subsortitionem eius in eo
codice non haberet qui tum interlitus proferebatur.
His de causis C. Iunius condemnatus est, iudices,
levissimis et infirmissimis, quas omnino in iudicium
adferri non oportuit; itaque oppressus est non causa,
sed tempore. XXXIV. Hoc vos Cluentio iudicium **92**

6. *At ad*, conj. Baiter: *ad*, ST: *at*, ω. 11. *cui tum populo*, ST: *cui tum*, ω (cp. § 62). 15. *accusatum*, ST: *accusatum fuisse*, FM. 18. *iam*, om. ST (cp. §§ 16, 21; 106, 11).

putatis obesse oportere? Quam ob causam? Si ex lege subsortitus non erat Iunius aut si in aliquam legem aliquando non iuraverat, idcirco illius damnatione aliquid de Cluentio iudicabatur? 'Non,' inquit 'sed ille idcirco illis legibus condemnatus est, quod contra aliam legem commiserat.' Qui hoc confitentur possunt idem illud iudicium fuisse defendere? 'Ergo' inquit 'idcirco infestus tum populus Romanus fuit C. Iunio, quod illud iudicium corruptum per eum putabatur.' Num igitur hoc tempore causa mutata est? num alia res, alia ratio illius iudicii, alia natura totius negotii nunc est ac tum fuit? Non opinor ex eis rebus quae gestae sunt rem ullam potuisse
93 mutari. Quid ergo est causae quod nunc nostra defensio audiatur tanto silentio, tum Iunio defendendi sui potestas erepta sit? Quia tum in causa nihil erat praeter invidiam, errorem, suspicionem, contiones cotidianas seditiose ac populariter concitatas. Accusabat tribunus plebis idem in contionibus, idem ad subsellia; ad iudicium non modo de contione, sed etiam cum ipsa contione veniebat; gradus illi Aurelii tum novi quasi pro theatro illi iudicio aedificati videbantur, quos ubi accusator concitatis hominibus complerat, non modo dicendi ab reo, sed
94 ne surgendi quidem potestas erat. Nuper apud C. Orchivium, collegam meum, locus ab iudicibus Fausto Sullae de pecuniis residuis non est constitutus, non quo illi aut exlegem esse Sullam aut causam pecuniae

2. *aliquam*, ST: om. ω. 5. *illis*, PST: *his*, ω. 7. *idem illud*, PST: *illud idem*, ω. 8. *fuit C. Iunio*, P: *Iunio fuit*, ω. 11. *natura*, om. P. 15. *tum*, T: *cum*, S: *tunc*, ω. 28. *quo*, ω: *quod*, P.

publicae contemptam atque abiectam putarent, sed quod accusante tribuno plebis condicione aequa disceptari posse non putarunt. Quid? conferam Sullamne cum Iunio? an hunc tribunum plebis cum Quinctio? an vero tempus cum tempore? Sulla maximis opibus, cognatis, adfinibus, necessariis, clientibus plurimis, haec autem apud Iunium parva et infirma et ipsius labore quaesita atque collecta: hic tribunus plebis modestus, prudens, non modo non seditiosus, sed etiam seditiosis adversarius, ille autem acerbus, criminosus, popularis homo ac turbulentus: tempus hoc tranquillum atque pacatum, illud omnibus invidiae tempestatibus concitatum. Quae cum ita essent, in Fausto tamen illi iudices statuerunt iniqua condicione reum causam dicere, cum adversario eius ad ius accusationis summa vis potestatis accederet. XXXV. Quam quidem rationem vos, 95
iudices, diligenter pro vestra sapientia et humanitate cogitare, et penitus perspicere debetis quid mali, quantum periculi uni cuique nostrum inferre possit vis tribunicia, conflata praesertim invidia et contionibus seditiose concitatis. Optimis hercule temporibus, tum cum homines se non iactatione populari, sed dignitate atque innocentia tuebantur, tamen nec P. Popilius neque Q. Metellus, clarissimi

3. *posse*, P and ω : *publice*, ST: *posse populum r.* (*i.e. Romanum*), F. *putarunt*, ST : *putaverunt*, ω. *Quid conferam? Sullamne cum Iunio*, Manutius, Müller, Faussett. 9. *prudens*, codd.: *pudens*, most edd. 12. *pacatum*, P and ω : *placatum*, ST (§138, 7). 18. *et humanitate*, om. ST : secl. Baiter, Faussett. 20. *vestrum*, ST. 25. *clarissimi atque amplissimi viri*, ω (cp. note on *ipsam*, § 81).

viri atque amplissimi, vim tribuniciam sustinere potuerunt; nedum his temporibus, his moribus, his magistratibus sine vestra sapientia ac sine iudiciorum
96 remediis salvi esse possimus. Non fuit illud igitur iudicium iudicii simile, iudices, non fuit, in quo non modus ullus est adhibitus, non mos consuetudoque servata, non causa defensa: vis illa fuit et, ut saepe iam dixi, ruina quaedam atque tempestas et quidvis potius quam iudicium aut disceptatio aut quaestio. Quod si quis est qui illud iudicium fuisse arbitretur et qui his rebus iudicatis standum putet, is tamen hanc causam ab illa debet seiungere; ab illo enim, sive quod in legem non iurasset sive quod e lege subsortitus iudicem non esset, multa petita esse dicitur, Cluenti autem ratio cum illis legibus quibus a Iunio multa petita est nulla potest ex parte esse coniuncta.

97 At enim etiam Bulbus est condemnatus. Adde maiestatis, ut intellegas hoc iudicium cum illo non esse coniunctum. At est hoc illi crimen obiectum. Fateor, sed etiam legionem esse ab eo sollicitatam in Illyrico C. Cosconi litteris et multorum testimoniis planum factum est, quod crimen erat proprium illius quaestionis et quae res lege maiestatis tenebatur. At hoc obfuit ei maxime. Iam ista divinatio est; qua si uti licet, vide ne mea coniectura multo sit verior. Ego enim sic arbitror, Bulbum, quod homo nequam, turpis, improbus, multis flagitiis contaminatus in iudicium sit adductus, idcirco facilius

6. *ullus*, ST: om. ω. 18. *At enim*, ST: *at*, ω.

esse damnatum: tu mihi ex tota causa Bulbi quod tibi commodum est eligis, ut id esse secutos iudices dicas.

XXXVI. Quapropter hoc Bulbi iudicium non plus **98**
huic obesse causae debet quam illa quae commemorata sunt ab accusatore duo iudicia, P. Popili et Ti. Guttae, qui causam de ambitu dixerunt. Qui*d*? accusati sunt ab eis qui erant ipsi ambitus condemnati: quos ego non idcirco esse arbitror in integrum restitutos quod planum fecerint illos ob rem iudicandam pecuniam accepisse, sed quod iudicibus probaverint, cum in eodem genere in quo ipsi offendissent alios reprehendissent, se ad praemia legis venire oportere. Quapropter neminem dubitare existimo quin illa damnatio ambitus nulla ex parte cum causa Cluenti vestroque iudicio coniuncta esse possit.

Quid, quod Staienus est condemnatus? Non dico **99**
hoc tempore, iudices, id quod nescio an dici oporteat, illum maiestatis esse condemnatum. Non recito testimonia hominum honestissimorum, quae in Staienum sunt dicta ab eis qui M. Aemilio, clarissimo viro, legati et praefecti et tribuni militares fuerunt; quorum testimoniis planum factum est maxime eius opera, cum quaestor esset, in exercitu seditionem esse conflatam. Ne illa quidem testimonia recito quae dicta sunt de HS IↃC, quae ille cum accepisset nomine iudicii Safiniani, sicut in Oppianici iudicio

7. *Quid? accusati sunt* is my conj.: *qui accusati sunt*, codd.: *quia accusati sunt*, Nettleship. 12. *probaverint*, ST: *probarint*, ω. *cum*, STFM: *quod*, ω (§ 23).

100 postea, reticuit atque suppressit. Omitto et haec
et alia permulta quae illo iudicio in Staienum dicta
sunt: hoc dico, eandem tum fuisse P. et L. Cominiis,
equitibus Romanis, honestis hominibus et disertis,
controversiam cum Staieno, quem accusabant, quae
nunc mihi est cum Accio. Cominii dicebant idem
quod ego dico, Staienum ab Oppianico pecuniam
accepisse ut iudicium corrumperet: Staienus con-
101 ciliandae gratiae causa accepisse dicebat. Irride-
batur haec illius reconciliatio et persona viri boni
suscepta, sicut in statuis inauratis quas posuit ad
Iuturnae, quibus subscripsit reges a se in gratiam
esse reductos; exagitabantur omnes eius fraudes
atque fallaciae; tota vita in eius modi ratione ver-
sata aperiebatur; egestas domestica, quaestus forensis
in medium proferebatur; nummarius interpres pacis
et concordiae non probabatur. Itaque tum Staienus,
cum idem defenderet quod Accius, condemnatus
102 est; Cominii cum hoc agerent, quod nos in tota
causa egimus, probaverunt. Quam ob rem si Staieni
damnatione Oppianicum iudicium corrumpere volu-
isse, Oppianicum iudici ad emendas sententias dedisse
pecuniam iudicatum est, cum ita constitutum sit
ut in illa culpa aut Cluentius sit aut Oppianicus,
Cluenti nummus nullus iudici datus ullo vestigio
reperietur, Oppianici pecunia post iudicium factum

1. *reticuit*, ST: *retinuit*, ω. 6. *est*, ω and all recent edd.: *sit*, ST and Classen (cp. § 119, 1, *erant*, all codd.). 9. *accepisse*, ST: *se accepisse*, ω: *accepisse se*, Baiter (see Notes). 13. *omnes eius*, PFM: *eius omnes*, ST. 24. *ut*, P: *uti*, ω. 26. *reperietur*, P: *reperitur*, ω.

ab iudice ablata est, — potest esse dubium quin illa damnatio Staieni non modo non sit contra Cluentium, sed maxime nostram causam defensionemque confirmet?

XXXVII. Ergo adhuc Iuni iudicium video esse **103**
eius modi ut incursionem potius seditionis, vim multitudinis, impetum tribunicium, quam iudicium appellandum putem. Quod si quis illud iudicium appellet, tamen hoc confiteatur necesse est, nullo modo illam multam quae ab Iunio petita sit cum Cluenti causa posse coniungi. Illud igitur Iunianum per vim factum est: Bulbi et Popili et Guttae contra Cluentium non est: Staieni etiam pro Cluentio est.

Videamus ecquod aliud iudicium, quod pro Cluentio sit, proferre possimus. Dixitne tandem causam C. Fidiculanius Falcula, qui Oppianicum condemnarat, cum praesertim,—id quod fuit in illo iudicio invidiosissimum,—paucos dies ex subsortitione sedisset? Dixit et bis quidem dixit; in summam enim L. Quinctius invidiam contionibus eum cotidianis seditiosis et turbulentis adduxerat. Uno iudicio multa est ab eo petita, sicut ab Iunio, quod non suae decuriae munere neque ex lege sedisset. Paulo sedatiore tempore est accusatus quam Iunius, sed eadem fere lege et crimine: quia nulla in iudicio seditio neque vis nec turba versata est, prima actione facillime est absolutus. Non numero hanc absolutionem; nihilo minus enim potest, ut illam multam non commiserit, accepisse tamen ob rem iudicandam *pecuniam*, *sicut*

29. *pecuniam sicut causam pecunia* is my emendation (see Notes).

causam pecunia capta nusquam Staienus eadem lege dixit. Proprium crimen illud quaestionis eius non
104 fuit. Fidiculanius quid fecisse dicebatur? accepisse a Cluentio HS cccc. Cuius erat ordinis? senatorii. Qua lege in eo genere a senatore ratio repeti solet, de pecuniis repetundis, ea lege accusatus honestissime est absolutus; acta est enim causa more maiorum, sine vi, sine metu, sine periculo; dicta et exposita et demonstrata sunt omnia; adducti iudices sunt non modo potuisse honeste ab eo reum condemnari qui non perpetuo sedisset, sed, aliud si is iudex nihil scisset nisi quae praeiudicia de eo facta esse constarent, audire
105 praeterea nihil debuisse. XXXVIII. Tum etiam illi quinque qui, imperitorum hominum rumusculos aucupati, tum illum absolverunt, iam suam clementiam laudari magno opere nolebant. A quibus si qui quaereret sedissentne iudices in C. Fabricium, sedisse se dicerent; si interrogarentur num quo crimine is esset accusatus praeterquam veneni eius quod quaesitum Habito diceretur, negarent; si deinde essent rogati quid iudicassent, condemnasse se dicerent; nemo enim absolvit. Eodem modo quaesitum si esset de Scamandro, certe idem respondissent; tametsi ille una sententia est absolutus, sed illam
106 unam nemo tum istorum suam dici vellet. Uter igitur facilius suae sententiae rationem redderet: isne qui se et sibi et rei iudicatae constitisse dicit, an ille qui se in principem maleficii lenem, in

3. *accepisse—HScccc,* ST soli. 11. *aliud si is,* T: *aliud is,* S: *si aliud is,* ω: *aliud si,* Halm, Baiter. 12. *constaret,* Lambinus. 26. *reddet,* Ernesti.

adiutores eius et conscios vehementissimum esse respondet? Quorum ego de sententia non debeo disputare; neque enim dubito quin ii tales viri suspicione aliqua perculsi repentina de statu suo declinarint. Qua re eorum qui absolverunt misericordiam non reprehendo, eorum qui in iudicando superiora iudicia secuti sunt (sua sponte, non Staieni fraude) constantiam comprobo, eorum vero qui sibi non liquere dixerunt sapientiam laudo,—qui absolvere eum quem nocentissimum cognorant, et quem ipsi bis iam antea condemnarant nullo modo poterant, condemnare, cum tanta consilii infamia et tam atrocis rei suspicio esset iniecta, paulo posterius patefacta re maluerunt. Ac ne ex facto solum sapientes illos 107
iudicetis, sed etiam ex hominibus ipsis quod hi fecerunt rectissime ac sapientissime factum probetis, quis P. Octavio Balbo ingenio prudentior, iure peritior, fide, religione, officio diligentior aut sanctior commemorari potest? Non absolvit. Quis Q. Considio constantior, quis iudiciorum atque eius dignitatis quae in iudiciis publicis versari debet peritior, quis virtute, consilio, auctoritate praestantior? Ne is quidem absolvit. Longum est de singulorum virtute ita dicere; quae cognita sunt ab omnibus verborum ornamenta non quaerunt. Qualis vir M. Iuventius Pedo fuit ex vetere illa iudicum disciplina,

2. *respondet*, edd.: *respondit*, codd., and Müller. Qy.? *dicat* (as S) ... *respondeat*. 3. *ii tales viri*, ω: *tales viri*, ST. 11. *bis iam*, ω: *bis*, ST (cp. §§ 16, 90). 24. *ita*, codd. (cp. § 142, 1): *illa*, Madvig: *ista*, Reid. *quae quia*, codd., which edd. retain (*cognita est . . . quaerit*, Pluygers, Faussett, bracketing *ita*): I delete *quia*.

qualis L. Caulius Mergus, M. Basilus, C. Caudinus! qui omnes in iudiciis publicis iam tum florente re publica floruerunt. Ex eodem numero L. Cassius, Cn. Heius, pari et integritate et prudentia; quorum nullius sententia est Oppianicus absolutus. Atque in his omnibus natu minimus, ingenio et diligentia et religione par eis quos antea commemoravi, P.
108 Saturius, in eadem sententia fuit. O innocentiam Oppianici singularem, quo in reo qui absolvit ambitiosus, qui distulit cautus, qui condemnavit constans existimatur!

XXXIX. Haec tum agente Quinctio neque in contione neque in iudicio demonstrata sunt; neque enim ipse dici patiebatur nec per multitudinem concitatam consistere cuiquam in dicendo licebat. Itaque ipse postquam Iunium pervertit, totam causam reliquit; paucis enim diebus illis et ipse privatus est factus et hominum studia defervisse intellegebat. Quod si per quos dies Iunium accusavit Fidiculanium accusare voluisset, respondendi Fidiculanio potestas facta non esset. Ac primo quidem omnibus illis iudicibus qui
109 Oppianicum condemnarant minabatur. Iam insolentiam noratis hominis, noratis animos eius ac spiritus tribunicios. Quod erat odium, di immortales, quae superbia, quanta ignorantia sui, quam gravis atque intolerabilis arrogantia! qui illud iam ipsum acerbe tulerit, ex quo illa nata sunt omnia, non sibi ac defensioni suae condonatum esse Oppianicum:

12. *agente*, STF: *agitante*, MW. 18. *defervisse*, STM: *deseruisse*, ω: *deferbuisse*, some codd. and edd. 25. *ignorantia*, ST: *ignoratio*, FMW.

proinde quasi non satis signi esse debuerit ab omnibus eum fuisse desertum qui se ad patronum illum contulisset. Erat enim Romae summa copia patronorum, hominum eloquentissimorum atque amplissimorum, quorum certe aliquis defendisset equitem Romanum, in municipio suo nobilem, si honeste putasset eius modi causam posse defendi. XL. Nam Quinctius quidem **110** quam causam umquam antea dixerat, cum annos ad quinquaginta natus esset? quis eum umquam non modo in patroni, sed in laudatoris aut advocati loco viderat? Qui quod rostra iam diu vacua locumque illum post adventum L. Sullae a tribunicia voce desertum oppresserat, multitudinemque desuefactam iam a contionibus ad veteris consuetudinis similitudinem revocarat, idcirco cuidam hominum generi paulisper iucundior fuit. Atque idem quanto in odio postea fuit illis ipsis per quos in altiorem locum ascenderat! Neque iniuria; facite enim ut non **111** solum mores eius et arrogantiam, sed etiam vultum atque amictum, atque illam usque ad talos demissam purpuram recordemini! Is, quasi non esset ullo modo ferendum se ex iudicio discessisse victum, rem a subselliis ad rostra detulit. Et iam querimur saepe hominibus novis non satis magnos in hac civitate esse fructus? Nego usquam umquam fuisse

12. *a* om. ST. 16. *Atque*, codd.: *Atqui*, Klotz (cp. § 25). 17. *fuit illis ipsis*, Baiter: *illis ipsis fuit*, Müller: *suis illis ipsis fuit*, ω, Ramsay: *suis ipsis*, ST: *suis ipsis fuit*, Classen, Kayser, Faussett. 19. *eius et arrogantiam*, ω: (*et* om. FM and dett.): *et arrogantiam eius*, ST. see note on *ipsam*, § 81. 20. *atque*, ω: *atque etiam*, ST. 23. *Et iam*, ω: *etiam*, S.

maiores, ubi si quis ignobili loco natus ita vivit ut nobilitatis dignitatem virtute tueri posse videatur, usque eo pervenit quoad eum industria cum innoc-
112 entia prosecuta est; si quis autem hoc uno nititur, quod sit ignobilis, procedit saepe longius quam si idem ille esset cum isdem suis vitiis nobilissimus. Ut Quinctius—nihil enim dicam de ceteris—si fuisset homo nobilis, quis eum cum illa superbia atque intolerantia ferre potuisset? Quod eo loco fuit, ita tulerunt ut, si quid haberet a natura boni, prodesse ei putarent oportere, superbiam autem atque arrogantiam eius deridendam magis arbitrarentur propter humilitatem hominis quam pertimescendam.

XLI. Sed, ut illuc revertar, quo tempore Fidiculanius est absolutus tu, qui iudicia facta commemoras, quid tum esse existimas iudicatum? certe gratis iudicasse.
113 At condemnarat, at causam totam non audierat, at in contionibus a L. Quinctio vehementer erat et saepe vexatus. Illa igitur omnia Quinctiana iniqua, falsa, turbulenta, popularia, seditiosa iudicia fuerunt. Esto: potuit esse innocens Falcula. Iam ergo aliqui Oppianicum gratis condemnavit; iam non eos Iunius subsortitus est qui pecunia accepta condemnarent; iam videtur aliqui ab initio non sedisse et tamen Oppianicum gratis condemnasse. Verum, si innocens

16. *quid*, ST: *quaero quid*, FMW: *quaeso quid*, Klotz and edd. (see Notes). 19. *in contionibus* S(T?): *in contionibus omnibus*, ω (cp. § 29, 16). 22. *aliqui*, ST: *aliquis*, ω. 25. *videtur* is my conj. (see Notes): *putaretur*, ST (*putetur?*) *potuit* FMW (*poterit?*): *potuerunt*, cod. Lamb., Baiter: *putabitur*, Kayser.

Falcula, quaero quis sit nocens? si hic gratis condemnavit, quis accepit? Nego rem esse ullam in quemquam illorum obiectam quae Fidiculanio non obiecta sit, aliquid fuisse in Fidiculani causa quod idem non esset in ceterorum. Aut hoc iudicium **114**
reprehendas tu, cuius accusatio rebus iudicatis niti videbatur, necesse est, aut, si hoc verum esse concedis, Oppianicum gratis condemnatum esse fateare.

Quamquam satis magno argumento esse debet, quod ex tam multis iudicibus absoluto Falcula nemo reus factus est. Quid enim mihi damnatos ambitus colligitis, alia lege, certis criminibus, plurimis testibus? cum primum illi ipsi debuerint potius accusari de pecuniis repetundis quam ambitus; nam si in ambitus iudiciis hoc eis obfuit, cum alia lege causam dicerent, certe, si propria lege huius peccati adducti essent, multo plus obfuisset. Deinde si tanta vis fuit istius **115**
criminis, ut, qua quisque lege ex illis iudicibus reus factus esset, tamen hac plaga periret, cur in tanta multitudine accusatorum, tantis praemiis, ceteri rei facti non sunt? Hic profertur id quod iudicium appellari non oportet, P. Septimio Scaevolae litem eo nomine esse aestimatam. Cuius rei quae consuetudo sit, quoniam apud homines peritissimos dico, pluribus verbis docere non debeo; numquam enim ea diligentia quae solet adhiberi in ceteris iudiciis

1. *quis sit*, ω, Classen, Baiter, Müller: *qui sit*, ST, Kayser, Faussett: *quis*, FMW. 3. *in quemquam*, codd.: *cuiquam*, Madvig. 4. *non obiecta*, ST: *obiecta non*, FMW (cp. § 70, 11). *aliquid*, codd.: *aut quidquam*, Madvig. 6. *niti videbatur*, ω: *nitebatur*, ST, Lamb. 26. *ceteris iudiciis*, codd.: *cetero iudicio*, Pluygers.

116 eadem reo damnato adhibita est. In litibus aestimandis fere iudices aut, quod sibi eum quem semel condemnarunt inimicum putant esse, si quae in eum lis capitis illata est, non admittunt, aut, quod se perfunctos iam esse arbitrantur, cum de reo iudicarunt, neglegentius attendunt cetera. Itaque et maiestatis absoluti sunt permulti, quibus damnatis de pecuniis repetundis lites maiestatis essent aestimatae, et hoc cotidie fieri videmus, ut reo damnato de pecuniis repetundis, ad quos pervenisse pecunias in litibus aestimandis statutum sit, eos idem iudices absolvant; quod cum fit, non iudicia rescinduntur, sed hoc statuitur, aestimationem litium non esse iudicium. Scaevola condemnatus est aliis criminibus, frequentissimis Apuliae testibus; omni contentione pugnatum est uti lis haec capitis aestimaretur. Quae res si rei iudicatae pondus habuisset, ille postea vel isdem vel aliis inimicis reus hac lege ipsa factus esset.

117 XLII. Sequitur id quod illi iudicium appellant, maiores autem nostri numquam neque iudicium nominarunt neque proinde ut rem iudicatam observarunt, animadversionem atque auctoritatem censoriam. Qua de re ante quam dicere incipio, perpauca mihi de meo officio verba faciunda sunt, ut a me cum huiusce periculi tum ceterorum quoque officiorum et amicitiarum ratio conservata esse videatur. Nam mihi cum viris fortibus qui censores proxime fuerunt

4. *non remittunt*, Postgate (*Journ. Phil.*, xxvi., p. 89). 8. *maiestatis*, ST : om. ω. 11. *eos idem* (*iidem*), Baiter : *eosdem*, ST : *eos illi*, ω (cp. pro Rabir. Post. § 36). 24. *cum huiusce periculo ceterorum*, ST.

ambobus est amicitia, cum altero vero, sicuti plerique vestrum sciunt, magnus usus et summa utriusque officiis constituta necessitudo. Qua re quicquid de **118**
subscriptionibus eorum mihi dicendum erit, eo dicam animo ut omnem orationem meam non de illorum facto, sed de ratione censoria habitam existimari velim; a Lentulo autem, familiari meo, qui a me pro eximia sua virtute summisque honoribus quos a populo Romano adeptus est honoris causa nominatur, facile hoc, iudices, impetrabo, ut, quam ipse adhibere consuevit in amicorum periculis cum fidem et diligentiam tum vim animi libertatemque dicendi, ex hac mihi concedat ut tantum mihi sumam quantum sine huius periculo praeterire non possim. A me tamen, ut aequum est, omnia caute pedetemptimque dicentur, ut neque fides huius defensionis relicta neque cuiusquam aut dignitas laesa aut amicitia violata esse videatur.

Video igitur, iudices, animadvertisse censores in **119**
iudices quosdam illius consilii Iuniani, cum istam ipsam causam subscriberent. Hic illud primum commune proponam, numquam animadversionibus censoriis hanc civitatem ita contentam ut rebus iudicatis fuisse. Neque in re nota consumam tempus; exempli causa ponam unum illud, C. Getam, cum a L. Metello et Cn. Domitio censoribus ex senatu eiectus esset, censorem esse ipsum postea factum, et

3. *necessitudo,* edd.: *necessitudo est,* ω: *consuetudo,* ST. 13. *ex hac,* ST: *in hac,* ω. 14. *possim,* ST: *possum,* ω. 24. *consumam tempus exemplis. Ponam illud unum,* all codd. except ST. So Ramsay: see Notes.

cuius mores erant a censoribus reprehensi, hunc postea et populi Romani et eorum qui in ipsum animadverterant moribus praefuisse. Quod si illud iudicium putaretur, ut ceteri turpi iudicio damnati in perpetuum omni honore ac dignitate privantur, sic hominibus ignominia notatis neque ad honorem

120 aditus neque in curiam reditus esset. Nunc si quem Cn. Lentuli aut L. Gelli libertus furti condemnarit, is omnibus ornamentis amissis numquam ullam honestatis suae partem recuperabit; quos autem ipse L. Gellius et Cn. Lentulus, duo censores, clarissimi viri sapientissimique homines, furti et captarum pecuniarum nomine notaverunt, ii non modo in senatum redierunt, sed etiam illarum ipsarum rerum iudiciis absoluti sunt. XLIII. Neminem voluerunt maiores nostri non modo de existimatione cuiusquam, sed ne pecuniaria quidem de re minima esse iudicem, nisi qui inter adversarios convenisset; quapropter in omnibus legibus quibus exceptum est de quibus causis aut magistratum capere non liceat aut iudicem legi aut alterum accusare, haec ignominiae causa praetermissa est; timoris enim causam, non vitae poenam in illa potestate esse voluerunt.

121 Itaque non solum illud ostendam, quod iam videtis, populi Romani suffragiis saepenumero censorias subscriptiones esse sublatas, verum etiam iudiciis eorum qui iurati statuere maiore cum religione et diligentia debuerunt. Primum iudices, senatores equitesque

24. *solum illud*, STM: *solum iudices illud*, ω. Qy. *solum illud iudices?* 26. *sublatas*, ST: *delatas*, M: *deletas*, F and edd.

Romani, in compluribus iam reis quos contra leges pecunias accepisse subscriptum est, suae potius religioni quam censorum opinioni paruerunt; deinde praetores urbani, qui iurati debent optimum quemque in lectos iudices referre, numquam sibi ad eam rem censoriam ignominiam impedimento esse oportere duxerunt; censores denique ipsi saepe numero superi- 122
orum censorum iudiciis, si ista iudicia appellari vultis, non steterunt. Atque etiam ipsi inter se censores sua iudicia tanti esse arbitrantur ut alter alterius iudicium non modo reprehendat, sed etiam rescindat; ut alter de senatu movere velit, alter retineat et ordine amplissimo dignum existimet; ut alter in aerarios referri aut tribu moveri iubeat, alter vetet. Qua re qui vobis in mentem venit haec appellare iudicia, quae a populo rescindi, ab iuratis iudicibus repudiari, a magistratibus neglegi, ab eis qui eandem potestatem adepti sunt commutari, inter collegas discrepare videatis?

XLIV. Quae cum ita sint, videamus quid tandem 123
censores de illo iudicio corrupto iudicasse dicantur. Ac primum illud statuamus, utrum quia censores subscripserint ita sit, an quia ita fuerit illi subscripserint. Si quia subscripserint, videte quid agatis, ne in unum quemque nostrum censoribus in posterum potestatem regiam permittatis, ne subscriptio censoria non minus calamitatis civibus quam illa acerbissima proscriptio

2. *accepisse*, ST: *cepisse*, ω. 5. *lectos*, ST: *selectos*, ω. *sibi numquam*, ST. 8. *appellari*, ω: *appellare*, ST (see note on *reticeri*, § 18). 14. *referri*, ω: *referre*, ST. *moveri*, ω: *movere*, ST. 16. *populo*, ST: *populo Romano*, ω. 18 *sint*, T. 24. *si ideo quia*, ω.

possit adferre, ne censorium stilum, cuius mucronem multis remediis maiores nostri rettuderunt, aeque posthac atque illum dictatorium gladium pertimesca-
124 mus. Sin autem quod subscriptum est, quia verum est, idcirco grave debet esse, hoc quaeramus, verum sit an falsum. Removeantur auctoritates censoriae; tollatur id ex causa quod in causa non est; doce quam pecuniam Cluentius dederit, unde dederit, quem ad modum dederit; unum denique aliquod a Cluentio *aliquando* profectae pecuniae vestigium ostende. Vince deinde bonum virum fuisse Oppianicum, hominem integrum, nihil de illo umquam secus esse existimatum, nihil denique praeiudicatum. Tum auctoritatem censoriam amplexator, tum illorum
125 'iudicium' coniunctum cum re esse defendito. Dum vero eum fuisse Oppianicum constabit qui tabulas publicas municipii manu sua corrupisse iudicatus sit, qui testamentum interleverit, qui supposita persona falsum testamentum obsignandum curaverit, qui eum cuius nomine id obsignatum est interfecerit, qui avunculum filii sui in servitute ac vinculis necaverit, qui municipes suos proscribendos occidendosque curaverit, qui eius uxorem quem occiderat in matrimonium duxerit, qui pecuniam pro abortione dederit, qui socrum, qui uxores, qui uno tempore fratris uxorem speratosque liberos fratremque ipsum, qui denique suos liberos interfecerit, qui cum venenum

3. *gladium*, ω; om. S. 9. *aliquod*, ω: om. ST. 10. *aliquando* I have inserted: *aliquid* S. 14. *amplexator*, STM: *amplexato*, Priscian viii. 5. 26, and edd. 24. *abortione*, S (and cod. S. Vict.): *potione*, TFM.

privigno suo dare vellet, manifesto deprehensus sit, cuius ministris consciisque damnatis ipse adductus in iudicium pecuniam iudici dederit ad sententias iudicum corrumpendas—dum haec, inquam, de Oppianico constabunt, neque ullo argumento Cluentianae pecuniae crimen tenebitur, quid est quod te ista censoria sive voluntas sive opinio fuit, adiuvare aut hunc innocentem opprimere posse videatur?

126 XLV. Quid igitur censores secuti sunt? Ne ipsi quidem, ut gravissime dicam, quicquam aliud dicent praeter sermonem atque famam; nihil se testibus, nihil tabulis, nihil aliquo gravi argumento comperisse, nihil denique causa cognita statuisse dicent. Quod si ita fecissent, tamen id non ita fixum esse deberet ut convelli non liceret. Non utar exemplorum copia, quae summa est; non rem veterem, non hominem potentem aliquem aut gratiosum proferam. Nuper hominem tenuem, scribam aedilicium, D. Matrinium, cum defendissem apud M. Iunium Q. Publicium praetores et M. Plaetorium C. Flaminium aediles curules, persuasi ut scribam iurati legerent eum quem idem isti censores aerarium reliquissent; cum enim in homine nulla culpa inveniretur, quid ille meruisset, non quid de eo statutum esset, quaerendum esse duxerunt. **127** Nam haec quidem quae de iudicio corrupto subscripserunt, quis est qui ab illis satis cognita et diligenter iudicata arbitretur? In M'. Aquilium et

1. *dare vellet*, ST: *quaereret*, ω (cp. *quaesitum*, § 55, 22). 11. *dicant*, F (for *dicam*). 23. *reliquissent*, ω: *reliquisse subscripserunt*, TF: *reliquisse scripserunt*, S.

in Ti. Guttam video esse subscriptum. Quid est hoc? duos esse corruptos solos pecunia dicant? ceteri videlicet gratis condemnarunt. Non est igitur circumventus, non est oppressus pecunia, non, ut illae Quinctianae contiones habebantur, omnes qui Oppianicum condemnarunt in culpa sunt ac suspicione ponendi. Duos solos video auctoritate censorum adfines ei turpitudini iudicari: aut illud adferant, aliquid *sese*, quod de his duobus habuerint compertum, de ceteris comperisse.

128 XLVI. Nam illud quidem minime probandum est, ad notationes auctoritatemque censoriam exemplum illos *e* consuetudine militari transtulisse. Statuerunt enim ita maiores nostri ut, si a multis esset flagitium rei militaris admissum, sortito in quosdam animadverteretur, ut metus videlicet ad omnes, poena ad paucos perveniret. Quod idem facere censores in delectu dignitatis et in iudicio civium et in animadversione vitiorum qui convenit? Nam miles qui locum non tenuit, qui hostium impetum vimque pertimuit, potest idem postea et miles esse melior et vir bonus et civis utilis. Qua re qui in bello propter hostium metum deliquerat, amplior ei mortis et supplicii metus est a maioribus constitutus; ne autem nimium multi poenam capitis
129 subirent, idcirco illa sortitio comparata est. Hoc tu

2. *dicant*, codd.: *iudicant*, Madvig, Müller. 4. *est* om. ST. 9. *sese*, Leclerc and edd.: *esse*, codd. 10. *comperisse*, codd.: *non comperisse*, Graevius and most edd. 13. *e* add. Baiter: cp. § 129, 18. 15. *sortito*, Classen: *sortitio*, ST: *sortitione*, ω (as § 129,19, perhaps rightly). 22. *qui ... deliquerat*, ST: *ne ... delinqueret*, ω.

idem facies censor in senatu legendo? Si erunt plures qui ob innocentem condemnandum pecuniam acceperint, tu non animadvertes in omnes, sed carpes ut velis, et paucos ex multis ad ignominiam sortiere? Habebit igitur te sciente et vidente curia senatorem, populus Romanus iudicem, res publica civem sine ignominia quemquam, qui ad perniciem innocentis fidem suam et religionem pecunia commutarit; et qui pretio adductus eripuerit patriam, fortunas, liberos civi innocenti, is censoriae severitatis nota non inuretur? Tu es praefectus moribus, tu magister veteris disciplinae ac severitatis, si aut retines quemquam sciens in senatu scelere tanto contaminatum, aut statuis qui in eadem culpa sit non eadem poena adfici convenire? Aut quam condicionem supplicii maiores in bello timiditati militis propositam esse voluerunt, eandem tu in pace constitues improbitati senatoris? Quod si hoc exemplum ex re militari ad animadversionem censoriam transferendum fuit, sortitione id ipsum factum esse oportuit; sin autem sortiri ad poenam et hominum delictum fortunae iudicio committere minime censorium est, certe in multorum peccato carpi paucos ad ignominiam [et turpitudinem] non oportet.

XLVII. Verum omnes intellegimus in istis subscrip- **130**
tionibus ventum quendam popularem esse quaesitum. Iactata res erat in contione a tribuno seditioso;

14. *adfici convenire aut* (*ut*, F) *quam ... constitues*, PF: *affici oportere convenire ut ad quam ... constituas*, ST. Qy.? *affici oportere, et convenire ut*, etc. 23. *ad ignominiam et turpitudinem*, ω: *et ignominiam*, P. Qy. *ad turpitudinem et ignominiam?* 27. *a tribuno seditioso*, ω: om. P.

incognita causa probatum erat illud multitudini; nemini licitum est contra dicere; nemo denique ut defenderet contrariam partem laborabat. In invidiam porro magnam illa iudicia venerant: etenim paucis postea mensibus alia vehemens erat in iudiciis ex notatione tabellarum invidia versata. Praetermitti ab censoribus et neglegi macula iudiciorum posse non videbatur. Homines quos ceteris vitiis atque omni dedecore infames videbant, eos hac quoque subscriptione notare voluerunt,—et eo magis quod illo ipso tempore, illis censoribus, erant iudicia cum equestri ordine communicata,—ut viderentur per hominum idoneorum ignominiam sua auctoritate illa
131 iudicia reprehendisse. Quod si hanc apud eosdem ipsos censores mihi aut alii causam agere licuisset, hominibus tali prudentia praeditis certe probavissem; res enim indicat nihil ipsos habuisse cogniti, nihil comperti; ex tota ista subscriptione rumorem quendam et plausum popularem esse quaesitum.

Nam in P. Popilium, qui Oppianicum condemnarat, subscripsit L. Gellius, quod is pecuniam accepisset, quo innocentem condemnaret. Iam id ipsum quantae divinationis est scire innocentem fuisse reum, quem fortasse numquam viderat, cum homines sapientissimi, iudices, ut nihil dicam de eis qui condemnar-
132 unt, causa cognita sibi dixerunt non liquere! Verum esto: condemnat Popilium Gellius, iudicat accepisse a Cluentio pecuniam. Negat hoc Lentulus. Nam

11. *ipso tempore*, ω: *ipso in tempore*, ST. 14. *eosdem*, P: *eos*, ω. 16. *praeditis*, P: om. ω: cp. § 79, 15. 26. *dixerunt* codd.: *dixerint* most edd.

Popilium, quod erat libertini filius, in senatum non legit, locum quidem senatorium ludis et cetera ornamenta relinquit, et eum omni ignominia liberat; quod cum facit, iudicat eius sententia gratis esse Oppianicum condemnatum. Et eundem Popilium postea Lentulus in ambitus iudicio pro testimonio diligentissime laudat. Qua re si neque L. Gelli iudicio stetit Lentulus neque Lentuli existimatione contentus fuit Gellius, et si uterque censor censoris opinione standum non putavit, quid est quam ob rem quisquam nostrum censorias subscriptiones omnes fixas et in perpetuum ratas putet esse oportere?

XLVIII. At in ipsum Habitum animadverterunt. **133**
Nullam quidem ob turpitudinem, nullum ob totius vitae non dicam vitium, sed erratum; neque enim hoc homine sanctior neque probior neque in omnibus officiis retinendis diligentior esse quisquam potest. Neque illi aliter dicunt, sed eandem illam famam iudicii corrupti secuti sunt: neque ipsi secus existimant quam nos existimari volumus de huius pudore, integritate, virtute, sed putarunt praetermitti accusatorem non potuisse, cum animadversum esset in iudices. Qua de re [tota] si unum factum ex omni antiquitate protulero, plura non dicam. Non enim **134**
mihi exemplum summi et clarissimi viri, P. Africani, praetereundum videtur, qui cum esset censor et in equitum censu C. Licinius Sacerdos prodisset, clara

3. *relinquit*, most edd.: *reliquit*, codd. (Faussett). 20. *existimari*, ST: *existimare*, ω. 22. *potuisse*, codd.: *posse*, Madvig, Faussett; cp. note on § 153, 5. 23. *tota*, codd. except ST.

voce, ut omnis contio audire posset, dixit se scire illum verbis conceptis peierasse: si qui contra vellet dicere, usurum esse eum suo testimonio: deinde cum nemo contra diceret, iussit equum traducere. Ita is, cuius arbitrio et populus Romanus et exterae gentes contentae esse consuerant, ipse sua scientia ad ignominiam alterius contentus non fuit. Quod si hoc Habito facere licuisset, facile illis ipsis iudicibus et falsae suspicioni et invidiae populariter excitatae restitisset.

135 Unum etiam est quod me maxime perturbat, cui loco respondere vix videor posse, quod elogium recitasti de testamento Cn. Egnati patris, hominis honestissimi videlicet et sapientissimi: idcirco se exheredasse filium quod is ob Oppianici condemnationem pecuniam accepisset. De cuius hominis levitate et inconstantia plura non dicam: hoc testamentum ipsum, quod recitas, eius modi est ut ille, cum eum filium exheredaret quem oderat, ei filio coheredes homines alienissimos adiungeret quem diligebat. Sed tu, Acci, consideres, censeo, diligenter, utrum censorum iudicium grave velis esse an Egnati. Si Egnati, leve est quod censores de ceteris subscripserunt; ipsum enim Cn. Egnatium, quem tu gravem esse vis, ex senatu eiecerunt: sin autem censorum, hunc Egnatium, quem pater censoria subscriptione exheredavit, censores in senatu, cum patrem eicerent, retinuerunt.

1. *posset*, edd.: *possit*, codd. (cp. § 179). 4. *Ita*, ST: *itaque*, ω. 6. *consuerunt*, codd. 14. *ob*, S: *ab*, T: *ad*, ω (cp. § 47, 15). 21. *censorum*, ω (as also l. 24): *censorium*, ST, and Quintil. v. 13. 33 (where however Meister now reads *censorum*).

XLIX. At enim senatus universus iudicavit illud 136 corruptum esse iudicium. Quo modo? Suscepit causam. An potuit rem delatam eius modi repudiare? cum tribunus plebis populo concitato rem paene ad manus revocasset, cum vir optimus et homo innocentissimus pecunia circumventus esse diceretur, cum invidia flagraret ordo senatorius, potuit nihil decerni? potuit illa concitatio multitudinis sine summo periculo rei publicae repudiari? At quid est decretum? quam iuste! quam sapienter! quam diligenter! SI QUI SUNT QUORUM OPERA FACTUM SIT UT IUDICIUM PUBLICUM CORRUMPERETUR. Utrum videtur id senatus factum iudicare, an, si factum sit, moleste graviterque ferre? Si ipse A. Cluentius sententiam de iudiciis rogaretur, aliam non diceret atque ii dixerunt quorum sententiis Cluentium condemnatum esse dicitis. Sed quaero a vobis num 137
istam legem ex isto senatus consulto L. Lucullus consul, homo sapientissimus, tulerit, num anno post M. Lucullus et C. Cassius, in quos tum consules designatos idem illud senatus decreverat? Non tulerunt; et quod tu Habiti pecunia factum esse arguis neque id ulla tenuissima suspicione confirmas, factum est primum illorum aequitate et sapientia consulum, ut id, quod senatus decreverat ad illud invidiae praesens incendium restinguendum, id postea ferendum ad populum non arbitrarentur: ipse deinde populus Romanus, qui L. Quincti fictis querimoniis

6. *circumventus esse*, *ω*: *circumventus*, ST (cp. §§ 16, 23, 75, 77, 81). 27. *ferendum*, Reid: *referendum*, ST: *perferendum*, *ω*. 28. *Quincti*, ST: *Quincti tribuni plebis*, *ω*.

antea concitatus rem illam et rogationem flagitarat, idem C. Iuni filii, pueri parvuli, lacrimis commotus, maximo clamore et concursu totam quaestionem
138 illam et legem repudiavit. Ex quo intellegi potuit id quod saepe dictum est: ut mare, quod sua natura tranquillum sit, ventorum vi agitari atque turbari, sic populum Romanum sua sponte esse placatum, hominum seditiosorum vocibus ut violentissimis tempestatibus concitari.

L. Est etiam reliqua permagna auctoritas, quam ego turpiter paene preterii; mea enim esse dicitur. Recitavit ex oratione nescio qua Accius, quam meam esse dicebat, cohortationem quandam iudicum ad honeste iudicandum et commemorationem cum aliorum iudiciorum quae probata non essent, tum illius ipsius iudicii Iuniani; proinde quasi ego non ab initio huius defensionis dixerim invidiosum illud iudicium fuisse, aut, cum de infamia iudiciorum disputarem, potuerim illud quod tam populare esset illo
139 tempore praeterire. Ego vero, si quid eius modi dixi, neque cognitum commemoravi neque pro testimonio dixi, et illa oratio potius temporis mei quam iudicii et auctoritatis fuit. Cum enim accusarem, et mihi initio proposuissem ut animos et populi Romani et iudicum commoverem, cumque omnes offensiones iudiciorum non ex mea opinione sed ex hominum rumore proferrem, istam rem, quae tam populariter

5. *sua natura*, *ω* and Rufinianus, *de Fig. Sent.*, § 24: *natura sua*, ST. 7. *sic*, ST: *sic et*, *ω*. 14. *cum ... tum*, SM.: *tum ... tum*, F. *aliorum*, Ernesti: *illorum*, codd. 19. *illo tempore*, ST: *in illo tempore*, *ω*.

esset agitata, praeterire non potui. Sed errat vehementer si quis in orationibus nostris, quas in iudiciis habuimus, auctoritates nostras consignatas se habere arbitratur; omnes enim illae causarum ac temporum sunt, non hominum ipsorum aut patronorum. Nam si causae ipsae pro se loqui possent, nemo adhiberet oratorem: nunc adhibemur ut ea dicamus, non quae nostra auctoritate constituantur, sed quae ex re ipsa causaque ducantur. Hominem ingeniosum, M. **140**
Antonium, aiunt solitum esse dicere idcirco se nullam umquam orationem scripsisse ut, si quid aliquando non opus esset ab se esse dictum, posset negare dixisse; proinde quasi si quid a nobis dictum aut actum sit, id nisi litteris mandarimus, hominum memoria non comprehendatur. LI. Ego vero in isto genere libentius cum multorum tum hominis eloquentissimi et sapientissimi, L. Crassi, auctoritatem sequor, qui cum Cn. Plancum defenderet, accusante M. Bruto, homine in dicendo vehemente et callido, cum Brutus duobus recitatoribus constitutis ex duabus eius orationibus capita alterna inter se contraria recitanda curasset, quod in dissuasione rogationis eius quae contra coloniam Narbonensem ferebatur quantum potest de auctoritate senatus detrahit, in suasione legis Serviliae summis ornat senatum laudibus, et multa in equites Romanos cum ex ea oratione asperius dicta recitasset, quo animi illorum iudicum in Crassum incenderentur,

4. *illae*, S: om. T: *illae orationes*, ω. 5. *aut*, ST: *ac*, FM. 13. *negare*, ST: *se negare*, ω. 18. *Cn.*, Schütz (*de Or.* ii. § 220): *C.*, ST and codd. in Quint. vi. 3, 44: *L.*, FMW.

141 aliquantum esse commotus dicitur. Itaque in respondendo primum exposuit utriusque rationem temporis, ut oratio ex re et ex causa habita videretur; deinde ut intellegere posset Brutus quem hominem et non solum qua eloquentia, verum etiam quo lepore et quibus facetiis praeditum lacessisset, tres ipse excitavit recitatores cum singulis libellis quos M. Brutus, pater illius accusatoris, de iure civili reliquit. Eorum initia cum recitarentur,—ea quae vobis nota esse arbitror: 'Forte evenit ut ruri in Privernati essemus ego et Brutus filius,' fundum Privernatem flagitabat; 'In Albano eramus ego et Brutus filius,' Albanum poscebat; 'In Tiburti forte cum adsedissemus ego et Brutus filius,' Tiburtem fundum requirebat; Brutum autem, hominem sapientem, quod filii nequitiam videret, quae praedia ei relinqueret testificari voluisse dicebat. Quod si potuisset honeste scribere se in balneis cum id aetatis filio fuisse, non praeterisset: eas se tamen ab eo balneas non ex libris patris, sed ex tabulis et ex censu quaerere. Crassus tum ita Brutum ultus est ut illum recitationis suae paeniteret; moleste enim fortasse tulerat se in eis orationibus reprehensum, quas de re publica habuisset, in quibus forsitan magis requiratur constantia. Ego autem
142 illa recitata esse non moleste fero; neque enim ab illo tempore quod tum erat, neque ab ea causa quae tum agebatur aliena fuerunt; neque mihi quicquam

7. *ipse*, ST: *et ipse*, ω (see on Tac. *Dial*, 30. 1, and Nägelsbach[8], p. 366 note). 17. *voluisse*, ω: *se voluisse*, STM. 20. *eas se tamen*, ω: *eas tamen*, ST.

oneris suscepi, cum ista dixi, quo minus honeste hanc causam et libere possem defendere. Quod si velim confiteri me causam A. Cluenti nunc cognosse, antea fuisse in illa populari opinione, quis tandem id possit reprehendere? praesertim, iudices, cum a vobis quoque ipsis hoc impetrari sit aequissimum, quod ego et ab initio petivi et nunc peto, ut, si quam huc graviorem de illo iudicio opinionem attulistis, hanc causa perspecta atque omni veritate cognita deponatis.

LII. Nunc, quoniam ad omnia quae abs te dicta **143** sunt, T. Acci, de Oppianici damnatione respondi, confiteare necesse est te opinionem multum fefellise, quod existimaris me causam A. Cluenti non facto eius, sed lege defensurum. Nam hoc persaepe dixisti tibi sic renuntiari, me habere in animo causam hanc praesidio legis defendere. Itane est? Ab amicis imprudentes videlicet prodimur, et est nescio quis de eis quos amicos nostros arbitramur qui nostra consilia ad adversarios deferat. Quisnam hoc tibi renuntiavit? quis tam improbus fuit? Cui ego autem narravi? Nemo, ut opinor, in culpa est: et nimirum tibi istud lex ipsa renuntiavit. Sed num tibi ita defendisse videor ut tota in causa mentionem ullam fecerim legis? num secus hanc

1. *ista*, ω: *ita*, ST: *illa*, Halm, Baiter: cp. § 107, 24. 8. *huc*, ω: *huic*, ST (in S the *i* is erased). Cp. § 6, 11. 18. *imprudentes videlicet*, S (and Quint. v. 13. 47): *imprudentes*, om. T: *videlicet imprudentes*, ω. 19. *nostros*, ST: *nobis*, ω and Quint. 21. *hoc tibi*, ST and Quint.: *tibi hoc*, ω. *cui ego autem*, ω and Quint.: *cui ego*, S: *cui*, T. 23. *et*, ST: *sed*, ω: om. Quint. 25. *fecerim legis*, ω: *legis fecerim*, ST.

causam defendisse ac si lege Habitus teneretur? Certe, ut hominem confirmare oportet, nullus est locus a me purgandi istius invidiosi criminis
144 praetermissus. Quid ergo est? quaeret fortasse quispiam: displicetne mihi legum praesidio capitis periculum propulsare? Mihi vero, iudices, non displicet, sed utor instituto meo. In hominis honesti prudentisque iudicio non solum meo consilio uti consuevi, sed multum etiam eius quem defendo et consilio et voluntati obtempero. Nam ut haec ad me causa delata est, qui leges eas ad quas adhibemur et in quibus versamur nosse deberem, dixi Habito statim eo capite QUI COISSET QUO QUIS CONDEMNARETUR illum esse liberum, teneri autem nostrum ordinem: atque ille me orare atque obsecrare coepit ne se lege defenderem. Cum ego quae mihi videbantur dicerem, traduxit me ad suam sententiam; adfirmabat enim lacrimans non se cupidiorem esse
145 civitatis retinendae quam existimationis. Morem homini gessi, et tamen idcirco feci—neque enim id semper facere debemus—quod videbam per se ipsam causam sine lege copiosissime posse defendi. Videbam in hac defensione qua iam sum usus plus dignitatis, in illa qua me hic uti noluit minus laboris futurum: quod si nihil aliud esset actum nisi ut hanc causam obtineremus, lege recitata perorassem.

4. *fortasse*, ω: *fortassis*, ST: cp. § 201. 5. *displicetne mihi*, ST: *displiceatne mihi*, ω and edd. *capitis*, ST and cod. S.Vict.: *a capite*, ω. 16. *ne se* ST: *ut ne sese*, ω. 17. *videbantur*, ST: *viderentur*, ω. 25. *esset*, P and ω: *fuisset*, ST (§ 81, 23) 26. *obtineremus*, PST.: *obtinerem*, ω.

LIII. Neque me illa oratio commovet, quod ait Accius indignum esse facinus, si senator iudicio quempiam circumvenerit, legibus eum teneri: si eques Romanus hoc idem fecerit, non teneri. Ut tibi con- 146
cedam hoc indignum esse, quod cuius modi sit iam videro, tu mihi concedas necesse est multo esse indignius in ea civitate quae legibus contineatur discedi ab legibus. Hoc enim vinculum est huius dignitatis qua fruimur in re publica, hoc fundamentum libertatis, hic fons aequitatis: mens et animus et consilium et sententia civitatis posita est in legibus. Ut corpora nostra sine mente, sic civitas sine lege suis partibus, ut nervis et sanguine et membris, uti non potest. Legum ministri magistratus, legum interpretes iudices, legum denique idcirco omnes servi sumus ut liberi esse possimus. Quid est, Q. Naso, 147
cur tu in isto loco sedeas? Quae vis est, qua abs te hi iudices tali dignitate praediti coerceantur? Vos autem, iudices, quam ob rem ex tanta multitudine civium tam pauci de hominum fortunis sententiam fertis? Quo iure Accius quae voluit dixit? Cur mihi tam diu potestas dicendi datur? Quid sibi autem illi scribae, quid lictores, quid ceteri quos apparere huic quaestioni video, volunt? Opinor haec omnia lege fieri totumque hoc iudicium, ut ante dixi, quasi mente quadam regi legis et administrari. Quid ergo? haec quaestio sola ita gubernatur?

1. *commovet*, P: *commoveret*, ω. 7. *contineatur*, PST: *teneatur*, ω. 14. *legum* ... *servi sumus*, ω: *legibus* ... *servimus*, P (in effect). 23. *illi*, om. ST. 26. *ante*, PST: *antea*, ω. 27. *ergo*, PST: *ergo est*, ω.

Quid M. Plaetori et C. Flamini inter sicarios, quid C. Orchivi peculatus, quid mea de pecuniis reptundis, quid C. Aquili, apud quem nunc de ambitu causa dicitur, quid reliquae quaestiones? Circumspicite
148 omnes rei publicae partes: omnia legum imperio et praescripto fieri videbitis. Si quis apud me, T. Acci, te reum velit facere, clames te lege pecuniarum repetundarum non teneri; neque haec tua recusatio confessio sit captae pecuniae, sed laboris et periculi non legitimi declinatio. LIV. Nunc quid agatur et quid abs te iuris constituatur vide. Iubet lex ea, qua lege haec quaestio constituta est, iudicem quaestionis, hoc est Q. Voconium, cum eis iudicibus qui ei obvenerint — vos appellat, iudices — quaerere de veneno. In quem quaerere? Infinitum est: QUICUMQUE FECERIT, VENDIDERIT, EMERIT, HABUERIT, DEDERIT. Quid eadem lex statim adiungit? recita. DEQUE EIUS CAPITE QUAERITO. Cuius? qui coierit, convenerit? Non ita est. Quid ergo est? dic. QUI TRIBUNUS MILITUM LEGIONIBUS QUATTUOR PRIMIS, QUIVE QUAESTOR, TRIBUNUS PLEBIS — deinceps omnes magistratus nominavit—QUIVE IN SENATU SENTENTIAM DIXIT, DIXERIT. Quid tum? QUI EORUM COIT, COIERIT, CONVENIT, CONVENERIT, QUO QUIS IUDICIO PUBLICO CONDEMNARETUR. 'Qui eorum': quorum? videlicet, qui supra scripti sunt. Quid interest utro modo scriptum sit? Etsi est apertum, ipsa tamen lex nos docet. Ubi enim omnes mortales adligat ita loquitur, QUI VENENUM

2. *de ambitu*, P and ω: *ambitus*, ST. 26. *interest*, ω: *intersit*, ST.

MALUM FECIT, FECERIT: omnes viri, mulieres, liberi, servi in iudicium vocantur. Si idem de coitione voluisset, adiunxisset: QUIVE COIERIT. Nunc ita est: DEQUE EIUS CAPITE QUAERITO QUI MAGISTRATUM HABUERIT INVE SENATU SENTENTIAM DIXERIT, QUI EORUM COIT, COIERIT. Num is est Cluentius? **149**
Certe non est. Quis ergo est Cluentius? Qui tamen defendi causam suam lege noluit. Itaque abicio legem: morem Cluentio gero. Tibi tamen, Acci, pauca quae ab huius causa seiuncta sunt respondebo. Est enim quiddam in hac causa quod Cluentius ad se, est aliquid quod ego ad me putem pertinere. Hic sua putat interesse se re ipsa et gesto negotio, non lege defendi; ego autem mea existimo interesse me nulla in disputatione ab Accio videri esse superatum. Non enim mihi haec causa sola dicenda est; omnibus hic labor meus propositus est, quicumque hac facultate defensionis contenti esse possunt. Nolo quemquam eorum qui adsunt existimare me, quae de lege ab Accio dicta sunt, si reticuerim, comprobare. Quam ob rem, Cluenti, de te tibi obsequor, neque enim legem recito neque hoc loco pro te dico; sed ea quae a me desiderari arbitror non relinquam.

LV. Iniquum tibi videtur, Acci, esse non isdem legi- **150**
bus omnes teneri. Primum, ut id iniquissimum esse confitear, eius modi est ut commutatis eis opus sit legibus, non ut his quae sunt non pareamus. Deinde

5. *inve*, TF: *in*, S: *quive in*, ω. 8. *noluit*, T: *nolit*, ω. 22. *enim*, T: *ego*, ω. 23. *quae te a me desiderare*, ST.

quis umquam hoc senator accusavit, ut cum altiorem gradum dignitatis beneficio populi Romani esset consecutus, eo se putaret durioribus legum condicionibus uti oportere? Quam multa sunt commoda quibus caremus, quam multa molesta et difficilia quae subimus! atque haec omnia tantum honoris et amplitudinis commodo compensantur. Converte nunc ad equestrem ordinem atque in ceteros ordines easdem vitae condiciones: non perferent. Putant enim minus multos sibi laqueos legum et condicionum ac iudiciorum propositos esse oportere, qui summum locum civitatis aut non potuerunt
151 ascendere aut non petiverunt. Atque ut omittam leges alias omnes quibus nos tenemur, ceteri autem sunt ordines liberati, hanc ipsam legem NE QUIS IUDICIO CIRCUMVENIRETUR C. Gracchus tulit: eam legem pro plebe, non in plebem tulit. Postea L. Sulla, homo a populi causa remotissimus, tamen, cum eius rei quaestionem hac ipsa lege constitueret qua vos hoc tempore iudicatis, populum Romanum, quem ab hoc genere liberum acceperat, adligare novo quaestionis genere ausus non est. Quod si fieri posse existimasset, pro illo odio quod habuit in equestrem ordinem nihil fecisset libentius quam omnem illam acerbitatem proscriptionis suae, qua est usus in veteres iudices, in hanc unam quaestion-
152 em contulisset. Nec nunc quicquam agitur—mihi credite, iudices, et prospicite id quod providendum

1. *accusavit ut cum*, codd.: *recusavit ne cum* (*quo*, Lambinus, Müller), Baiter. 12. *summum*, ST: *in summum*, F. 25. *qua est usus*, Manutius; *quaestus* or *questus*, codd.

est—nisi ut equester ordo in huiusce legis periculum concludatur. Neque hoc agitur ab omnibus, sed a paucis. Nam ii senatores qui se facile tuentur integritate et innocentia—quales, ut vere dicam, vos estis, et ceteri qui sine cupiditate vixerunt—equites ordini senatorio dignitate proximos, concordia coniunctissimos esse cupiunt; sed ii qui sese volunt posse omnia neque praeterea quicquam esse aut in homine ullo aut in ordine hoc uno metu se putant equites Romanos in potestatem suam redacturos, si constitutum sit ut de eis qui rem iudicarint huiusce modi iudicia fieri possint. Vident enim auctoritatem huius ordinis confirmari: vident iudicia comprobari: hoc metu proposito evellere se aculeum severitatis vestrae posse confidunt. Quis enim de homine **153** audeat paulo maioribus opibus praedito vere et fortiter iudicare, cum videat sibi de eo quod coierit aut consenserit causam esse dicendam?

LVI. O viros fortes, equites Romanos, qui homini clarissimo ac potentissimo, M. Druso, tribuno plebis restiterunt, cum ille nihil aliud ageret cum illa cuncta quae tum erat nobilitate, nisi ut ii qui rem iudicassent huiusce modi quaestionibus in iudicium vocarentur. Tunc C. Flavius Pusio, Cn. Titinius, C. Maecenas, illa robora populi Romani, ceterique

10. *constitutum sit ... iudicarint*, Lambinus, Manutius: *constitutum est ... iudicarent*, codd. 21. *cum illa*, edd.: *quam cum illa*, codd. 22. *ut ii qui*, Halm: *utique*, codd.: *uti qui*, Manutius. 25. *ceterique eiusdem ordinis*, Klotz, Madvig: *ceterique eiuscemodi* (*huiuscemodi*, ω) *ordinis*, ST: *equestrisque ordinis*, Classen.

eiusdem ordinis non fecerunt idem quod nunc Cluentius ut aliquid culpae suscipere se putarent recusando, sed apertissime repugnarunt, cum haec recusarent et palam fortissime atque honestissime dicerent se potuisse iudicio populi Romani in amplissimum locum pervenire, si sua studia ad honores petendos conferre voluissent; sese vidisse in ea vita qualis splendor inesset, quanta ornamenta, quae dignitas; quae se non contempsisse, sed ordine suo patrumque suorum contentos fuisse et vitam illam tranquillam et quietam, remotam a procellis invidi-
154 arum et huiusce modi iudiciorum sequi maluisse: aut sibi ad honores petendos aetatem integram restitui oportere, aut, quoniam id non posset, eam condicionem vitae quam secuti petitionem reliquissent manere; iniquum esse eos qui honorum ornamenta propter periculorum multitudinem praetermisissent populi beneficiis esse privatos, iudiciorum novorum periculis non carere; senatorem hoc queri non posse, propterea quod ea condicione proposita petere coepisset, quodque permulta essent ornamenta quibus eam mitigare molestiam posset, locus, auctoritas, domi splendor, apud exteras nationes nomen et gratia, toga praetexta, sella curulis, insignia, fasces, exercitus, imperia, provinciae: quibus in rebus cum summa recte factis maiores nostri praemia tum plura peccatis pericula proposita esse voluerunt. Illi non hoc recusabant, ne ea lege accusarentur qua nunc Habitus accusatur,

4. *recusarent*, codd.: *reputarent*, Madvig, Müller: *refutarent*, Reid.

quae tunc erat Sempronia, nunc est Cornelia; intellegebant enim ea lege equestrem ordinem non teneri; sed ne nova lege adligarentur laborabant. Habitus 155
ne hoc quidem umquam recusavit, quo minus vel ea lege rationem vitae suae redderet qua non tenetur. Quae si vobis condicio placet, omnes id agamus ut haec quam primum in omnes ordines quaestio perferatur.

LVII. Interea quidem, per deos immortales! quoniam omnia commoda nostra, iura, libertatem, salutem denique legibus obtinemus, a legibus non recedamus. Simul et illud quam sit iniquum cogitemus populum Romanum aliud nunc agere; vobis rem publicam et fortunas suas commisisse, ipsum sine cura esse; non metuere ne lege ea quam numquam ipse iusserit, et quaestione qua se solutum liberumque esse arbitretur, per paucos iudices astringatur. Agit enim sic causam 156
T. Accius, adulescens bonus et disertus, omnes cives legibus teneri omnibus; vos attenditis et auditis silentio sicut facere debetis; A. Cluentius causam dicit eques Romanus ea lege qua lege senatores et ii qui magistratum habuerunt soli tenentur; mihi per eum recusare et in arce legis praesidia constituere defensionis meae non licet. Si obtinuerit causam Cluentius, sicuti vestra aequitate nixi confidimus, omnes existimabunt, id quod erit, obtinuisse propter innocentiam, quoniam ita defensus sit; in lege autem, quam attingere noluerit, praesidii nihil fuisse. Hic 157

1. *tunc*, ST: *tum*, FM. 5. *tenetur*, ST: *teneretur*, FMW. 14. *ipsum*, T (?): *se*, S: om. FMW. 21. *qua lege*, ω: *qua*, ST.

nunc est quiddam quod ad me pertineat, de quo ante dixi, quod ego populo Romano praestare debeam, quoniam is vitae meae status est ut omnis mihi cura et opera posita sit in hominum periculis defendendis. Video quanta et quam periculosa et quam infinita quaestio temptetur ab accusatoribus, cum eam legem quae in nostrum ordinem scripta sit in populum Romanum transferre conentur. Qua in lege est QUI COIERIT, quod quam late pateat videtis; CONVENERIT aeque incertum et infinitum est; CONSENSERIT, hoc vero cum infinitum tum obscurum et occultum; FALSUMVE TESTIMONIUM DIXERIT,—quis de plebe Romana testimonium dixit umquam cui non hoc periculum T. Accio auctore paratum esse videatis? Nam dicturum quidem certe, si hoc iudicium plebi Romanae propositum sit, neminem umquam esse
158 confirmo. Sed hoc polliceor omnibus, si cui forte hac lege negotium facessetur qui lege non teneatur, si is uti me defensore voluerit, me eius causam legis praesidio defensurum, et vel his iudicibus vel horum similibus facillime probaturum, et omni me defensione usurum esse legis, qua nunc ut utar ab eo cuius voluntati mihi obtemperandum est non conceditur. LVIII. Non enim debeo dubitare, iudices, quin, si qua ad vos causa eius modi delata sit eius qui lege non teneatur, etiam si is invidiosus aut multis offensus esse videatur, etiam si eum oderitis, etiam si inviti absoluturi sitis, tamen absolvatis et religioni potius

4. *hominum*, ST: *omnium*, ω: cp. § 79, 21. 10. *incertum et infinitum*, ST: *infinitum et incertum*, ω.

vestrae quam odio pareatis. Est enim sapientis 159
iudicis cogitare tantum sibi a populo Romano esse permissum quantum commissum sit et creditum, et non solum sibi potestatem datam, verum etiam fidem habitam esse meminisse; posse quem oderit absolvere, quem non oderit condemnare, et semper non quid ipse velit, sed quid lex et religio cogat cogitare; animadvertere qua lege reus citetur, de quo reo cognoscat, quae res in quaestione versetur. Cum haec sunt videnda tum vero illud est hominis magni, iudices, atque sapientis, cum illam iudicandi causa tabellam sumpserit, non se reputare solum esse neque sibi quodcumque concupierit licere, sed habere in consilio legem, religionem, aequitatem, fidem; libidinem autem, odium, invidiam, metum cupiditatesque omnes amovere maximique aestimare conscientiam mentis suae, quam ab dis immortalibus accepimus, quae a nobis divelli non potest; quae si optimorum consiliorum atque factorum testis in omni vita nobis erit, sine ullo metu et summa cum honestate vivemus.
Haec si T. Accius aut cognovisset aut cogitasset, pro- 160
fecto ne conatus quidem esset dicere, id quod multis verbis egit, iudicem quod ei videatur statuere et non devinctum legibus esse oportere.

Quibus de rebus mihi pro Cluenti voluntate nimium, pro rei dignitate parum, pro vestra prudentia satis dixisse videor. Reliqua perpauca sunt; quae

2. After *iudicis* ST have an obvious gloss [*meminisse se hominem*]. 7. *cogat*, om. ST: for *cogitare* Pluygers conjectured *iudicare*, Hartman *rogare*. 12. *reputare solum esse*, ST: *putare esse solum*, ω.

quia vestrae quaestionis erant, idcirco illi statuerunt fingenda esse sibi et proferenda, ne omnium turpissimi reperirentur si in iudicium nihil praeter invidiam attulissent. LIX. Atque ut existimetis necessario me de his rebus de quibus iam dixerim pluribus egisse verbis, attendite reliqua: profecto intellegetis ea quae paucis demonstrari potuerint brevissime esse defensa.

161 Cn. Decidio Samniti, ei qui proscriptus est, iniuriam in calamitate eius ab huius familia factam esse dixistis. Ab nullo ille liberalius quam a Cluentio tractatus est: huius illum opes in rebus eius incommodissimis sublevarunt, atque hoc cum ipse tum eius amici necessariique omnes cognorunt. Anchari et Paceni pastoribus huius vilicum vim et manus attulisse. Cum quaedam in callibus, ut solet, controversia pastorum esset orta, Habiti vilici rem domini et privatam possessionem defenderunt: cum esset expostulatio facta, causa illis demonstrata, sine iudicio
162 controversiaque discessum est. 'P. Aeli testamento propinquus exheredatus cum esset, heres hic alienior institutus est.' P. Aelius Habiti merito fecit, neque hic in testamento faciendo interfuit, idque testamentum ab huius inimico Oppianico est obsignatum. Floro legatum ex testamento infitiatum esse. Non est ita; sed cum HS $\overline{\text{XXX}}$ scripta essent pro HS $\overline{\text{CCC}}$, neque ei cautum satis videretur, voluit eum aliquid

4. *me necessario*, ST. 7. *potuerint*, ST: *potuerunt*, ω. 9. *Decidio*, STF (*C.I.L.* v. 1187, 1188): *Decitio*, MW. 10. *dixistis*, Manutius: *dixisti*, FMW: *dixit*, ST. 16. *callibus*, Ernesti and edd.: *collibus*, codd.

acceptum referre liberalitati suae. Primo debere negavit; post sine controversia solvit. Cei cuiusdam Samnitis uxorem post bellum ab hoc esse repetitam. Mulierem cum emisset a sectoribus, quo tempore eam primum liberam esse audivit, sine iudicio reddidit Ceio. Ennium esse quendam cuius bona teneat **163** Habitus. Est hic Ennius egens quidam calumniator, mercennarius Oppianici, qui permultos annos quievit; deinde aliquando cum servis Habiti furti egit; nuper ab ipso Habito petere coepit. Hic illo privato iudicio, mihi credite, vobis isdem fortasse patronis, calumniam non effugiet. Atque etiam, ut nobis renuntiatur, hominem multorum hospitem, Ambivium quendam, coponem de via Latina, subornatis, qui sibi a Cluentio servisque eius in taberna sua manus adlatas esse dicat. Quo de homine nihil etiam nunc dicere nobis est necesse: si invitaverit, id quod solet, sic hominem accipiemus ut moleste ferat se de via decessisse.

Habetis, iudices, quae in totam causam de moribus **164** A. Cluenti, quem illi invidiosum esse reum volunt, annos octo meditati accusatores collegerunt: quam levia genere ipso! quam falsa re! quam brevia responsu! LX. Cognoscite nunc id quod ad vestrum ius iurandum pertinet, quod vestri iudicii est, quod vobis oneris imposuit ea lex qua coacti huc convenistis, de criminibus veneni; ut omnes intellegant quam paucis verbis haec causa perorari potuerit, et

1. *debere*, ST: *deberi*, FMW. 9. *servis*, ST: *servo*, ω. 11. *vobis*, most codd.: a few have *nobis* (so Madvig, Müller). 13. *hospitem*, ST, cod. S. Vict.: *hospitum*, ω. 19. *causam*, ST: *vitam*, ω.

quam multa a me dicta sint quae ad huius voluntatem maxime, ad vestrum iudicium minime pertinerent.

165 Obiectum est C. Vibium Cappadocem ab hoc A. Cluentio veneno esse sublatum. Opportune adest homo summa fide et omni virtute praeditus, L. Plaetorius, senator, qui illius Vibi hospes fuit et familiaris. Apud hunc ille Romae habitavit, apud hunc aegrotavit, huius domi est mortuus. At heres est Cluentius. Intestatum dico esse mortuum possessionemque eius bonorum, ex edicto praetoris, huic, illius sororis filio, adulescenti pudentissimo et in primis honesto, equiti Romano datam, Numerio Cluentio, quem videtis.

166 Alterum veneficii crimen Oppianico huic adulescenti, cum eius in nuptiis more Larinatium multitudo hominum pranderet, venenum Habiti consilio paratum; id cum daretur in mulso, Balbutium quendam, eius familiarem, intercepisse, bibisse, statimque esse mortuum. Hoc ego si sic agerem tamquam mihi crimen esset diluendum, haec pluribus verbis dicerem

167 per quae nunc paucis percurrit oratio mea. Quid umquam Habitus in se admisit ut hoc tantum ab eo facinus non abhorrere videatur? quid autem magno opere Oppianicum metuebat, cum ille verbum omnino in hac ipsa causa nullum facere potuerit, huic autem accusatores viva matre deesse non possint? id quod iam intellegetis. An ut de causa eius periculi nihil decederet, ad causam novum crimen accederet?

3. *C.*, ω: om. ST. *Cappadocem*, ST: *Capacem*, ω. 8. *At* (*aut* codd.) *heres est Cluentius*, om. STF and edd. 17. [*bibisse*], Pluygers. 19. *verbis* om. Quint. ix. 2. 48. 20. *per quae*, ST: *quae*, ω.

Quod autem tempus veneni dandi illo die, illa frequentia? per quem porro datum? unde sumptum? quae deinde interceptio poculi? cur non de integro autem datum? Multa sunt quae dici possunt, sed non committam ut videar non dicendo voluisse dicere; res enim iam se ipsa defendit. Nego illum 168
adulescentem, quem statim epoto poculo mortuum esse dixistis, omnino illo die esse mortuum. Magnum crimen et impudens mendacium! Perspicite cetera. Dico illum, cum ad illud prandium crudior venisset et, ut aetas illa fert, sibi tum non pepercisset, aliquot dies aegrotasse et ita esse mortuum. Quis huic rei testis est? Idem qui sui luctus, pater, —pater, inquam, illius adulescentis; quem propter animi dolorem pertenuis suspicio potuisset ex illo loco testem in A. Cluentium constituere, is hunc suo testimonio sublevat; quod recita. Tu autem, nisi molestum est, paulisper exsurge; perfer hunc dolorem commemorationis necessariae, in qua ego diutius non morabor, quoniam, quod fuit viri optimi, fecisti ut ne cui innocenti maeror tuus calamitatem et falsum crimen adferret.

LXI. Unum etiam mihi reliquum eius modi crimen 169
est, iudices, ex quo illud perspicere possitis quod a me initio orationis meae dictum est: quicquid mali per hosce annos A. Cluentius viderit, quicquid hoc tempore habeat sollicitudinis ac negotii, id omne a matre

1. *illa frequentia*, ST: *in illa frequentia*, ω (also Quint. ix. 3. 37). 3. *deinde*, codd.: *porro*, Quint. *l.c.* 6. *iam*, om. ST. (cp. § 90). 9. *crimen*, ST b^2: om. ω (perhaps rightly). 11. *tum*, codd.: *tamen*, some edd. 27. *habeat*, FMW: *habuit*, ST: *habuerit*, Klotz.

esse conflatum. Oppianicum veneno necatum esse quod ei datum sit in pane per M. Asellium quendam, familiarem illius, idque Habiti consilio factum esse dicitis. In quo primum illud quaero, quae causa Habito fuerit cur interficere Oppianicum vellet. Inimicitias enim inter eos fuisse confiteor; sed homines inimicos suos morte adfici volunt aut quod
170 [eos] metuunt aut quod oderunt. Quo tandem igitur Habitus metu adductus tantum in se facinus suscipere conatus est? quid erat quod iam Oppianicum poena adfectum pro maleficiis et eiectum e civitate quisquam timeret? quid metuebat? ne oppugnaretur a perdito? an ne accusaretur a damnato? an ne exsulis testimonio laederetur? Si autem quod oderat Habitus inimicum, idcirco illum vita frui noluit, adeone erat stultus ut illam, quam tum ille vivebat, vitam esse arbitraretur, damnati, exsulis, deserti ab omnibus? quem propter animi importunitatem nemo recipere tecto, nemo adire, nemo adloqui, nemo
171 aspicere vellet? Huius igitur Habitus vitae invidebat? Hunc si acerbe et penitus oderat, non eum quam diutissime vivere velle debebat? huic mortem maturabat inimicus, quod illi unum in malis erat perfugium calamitatis? Qui si quid animi et virtutis habuisset, ut multi saepe fortes viri in eius modi dolore, mortem sibi ipse conscisset, huic quam ob rem id vellet inimicus offerre quod ipse sibi optare deberet? Nam nunc quidem quid tandem illi mali

6. *inter eos*, MW: *inter ipsos*, F: om. ST and edd. 8. *eos*, ST: om. ω. 15. *inimicum*, ST: om. ω. 20. *Habitus vitae*, ST: *vitae Habitus*, ω.

mors attulit? nisi forte ineptis fabulis ducimur ut existimemus illum ad inferos impiorum supplicia perferre ac plures illic offendisse inimicos quam hic reliquisse: a socrus, ab uxorum, a fratris, a liberum Poenis actum esse praecipitem in sceleratorum sedem ac regionem. Quae si falsa sunt, id quod omnes intellegunt, quid ei tandem mors eripuit praeter sensum doloris? Age vero, per quem venenum datum? **172**
per M. Asellium. LXII. Quid huic cum Habito? nihil, atque adeo, quod ille Oppianico familiarissime est usus, potius etiam simultas. Eine igitur quem sibi offensiorem, Oppianico familiarissimum sciebat esse, potissimum et scelus suum et illius periculum committebat? Cur igitur tu, qui pietate ad accusandum excitatus es, hunc Asellium esse inultum tam diu sinis? Cur non Habiti exemplo usus es, ut per illum qui attulisset venenum de hoc praeiudicaretur?
Iam vero illud quam non probabile, quam inusitatum, **173**
iudices, quam novum, in pane datum venenum! *Num* latius potuit abditum aliqua in parte panis quam si totum colliquefactum in potione esset, celerius potuit comestum quam epotum in venas atque in omnes partes corporis permanare? facilius fallere in pane, si esset animadversum, quam in poculo, cum ita confusum esset ut secerni nullo modo

2. *ad*, ST: *apud*, ω. 4. *uxoris*, ST. 7. *mors eripuit*, SFM (with *aliud* wrongly, as in § 25 *alios*, inserted after *eripuit*, S, or before *mors*, FM): *eripuit mors*, T. 8. *per quem venenum*, ST: *venenum per quem*, ω. 14. *igitur*, ST: *deinde*, ω. 20. Num *latius potuit* is my conj.: *faciliusne potuit quam in poculo latius potuit*, ω. See Notes. 22. *comestum*, ST: *comesum*, ω.

174 posset? 'At repentina morte periit.' Quod si esset ita factum, tamen ea res propter multorum eius modi casum minime firmam veneni suspicionem haberet; quod si esset suspiciosum, tamen potius ad alios quam ad Habitum pertineret. Verum in eo ipso homines impudentissime mentiuntur: id ut intellegatis, et mortem eius et quem ad modum post mortem in Habitum sit crimen a matre quaesitum cognoscite.

175 Cum vagus et exsul erraret atque undique exclusus Oppianicus in Falernum se ad L. Quinctium contulisset, ibi primum in morbum incidit ac satis vehementer diuque aegrotavit. Cum esset una Sassia, eaque Sex. Albio quodam colono, homine valenti, qui simul esse solebat, familiarius uteretur quam vir dissolutissimus incolumi fortuna pati posset, et ius illud matrimonii castum atque legitimum damnatione viri sublatum arbitraretur, Nicostratus quidam, fidelis Oppianici servulus, percuriosus et minime mendax, multa dicitur domino renuntiare solitus esse. Interea Oppianicus cum iam convalesceret neque improbitatem coloni in Falerno diutius ferre posset et huc ad urbem profectus esset—solebat enim extra portam aliquid habere conducti—cecidisse de equo dicitur et homo infirma valetudine latus offendisse vehementer, et, postea quam ad urbem cum febri venerit, paucis diebus esse mortuus. Mortis ratio, iudices, eius modi est ut aut nihil habeat suspicionis aut, si quid habet, id intra parietes in domestico scelere versetur.

3. *casum minime firmam ... haberet*, ST : *mortem satis firmam ... non haberet*, ω. 4. *quodsi*, ST: *si*, ω. 10. *L. Quinctium*, ST: *C. Quinctilium*, ω. 23. *de*, ST: *ex*, ω (§ 186).

LXIII. Post mortem eius Sassia moliri statim nefaria 176
mulier coepit insidias filio: quaestionem habere de viri morte constituit. Emit de A. Rupilio, quo erat usus Oppianicus medico, Stratonem quendam, quasi ut idem faceret quod Habitus in emendo Diogene fecerat. De hoc Stratone et de Ascla quodam servo suo quaesituram esse dixit; praeterea servum illum Nicostratum, quem nimium loquacem fuisse ac nimium domino fidelem arbitrabatur, ab hoc adulescente Oppianico in quaestionem postulavit. Hic cum esset illo tempore puer et illa quaestio de patris sui morte constitui diceretur, etsi illum servum et sibi benivolum esse et patri fuisse arbitrabatur, nihil tamen est ausus recusare. Advocantur amici et hospites Oppianici et ipsius mulieris multi, homines honesti atque omnibus rebus ornati. Tormentis omnibus vehementissime quaeritur. Cum essent animi servorum et spe et metu temptati ut aliquid in quaestione dicerent, tamen, ut arbitror, auctoritate advocatorum [et vi tormentorum] adducti in veritate manserunt neque se quicquam scire dixerunt. Quaestio illo die de amicorum sententia dimissa est; 177
satis longo intervallo post iterum advocantur. Habetur de integro quaestio; nulla vis tormentorum acerrimorum praetermittitur. Adversari advocati et iam vix ferre posse; furere crudelis atque importuna mulier sibi nequaquam ut sperasset ea quae cogitasset procedere. Cum iam tortor atque essent tormenta

7. *quaesituram se esse,* Lambinus : *quaesituram sese,* Baiter. 20. [*et vi tormentorum*],Halm, Kayser, Müller. 25. *adversari* T : *adversarii,* SFω : *aversari,* Manutius and edd.

ipsa defessa neque tamen illa finem facere vellet, quidam ex advocatis, homo et honoribus populi ornatus et summa virtute praeditus, intellegere se dixit non id agi ut verum inveniretur, sed ut aliquid falsi dicere cogerentur. Hoc postquam ceteri comprobarunt, ex omnium sententia constitutum est satis
178 videri esse quaesitum. Redditur Oppianico Nicostratus, Larinum ipsa proficiscitur cum suis maerens, quod iam certe incolumem filium fore putabat, ad quem non modo verum crimen, sed ne ficta quidem suspicio perveniret et cui non modo aperta inimicorum oppugnatio, sed ne occultae quidem matris insidiae nocere potuissent. Larinum postquam venit, quae a Stratone illo venenum antea viro suo datum sibi persuasum esse simulasset, instructam ei continuo et ornatam Larini medicinae exercendae causa tabernam dedit.

LXIV. Unum, alterum, tertium annum Sassia quiescebat, ut velle atque optare aliquid calamitatis filio potius quam id struere et moliri videretur.
179 Tum interim *Q.* Hortensio Q. Metello consulibus, ut hunc Oppianicum aliud agentem ac nihil eius modi cogitantem ad hanc accusationem detraheret, invito despondit ei filiam suam,—illam quam ex genero susceperat,—ut eum nuptiis adligatum simul et testamenti spe devinctum posset habere in potestate. Hoc ipso fere tempore Strato ille medicus domi furtum fecit et caedem eius modi. Cum

14. *a Stratone*, ω: *per Stratonem*, s b²: *Stratonem*, T
26. *posset*, edd.: *possit*, codd. (cp. § 134).

esset in aedibus armarium, in quo sciret esse nummorum aliquantum et auri, noctu duos conservos dormientes occidit in piscinamque deiecit: ipse armarii fundum exsecuit, et HS * et auri quinque pondo abstulit, uno ex servis puero non grandi conscio. Furto postridie cognito omnis suspicio **180** in eos servos qui non comparebant commovebatur. Cum exsectio illa fundi in armario animadverteretur, quaerebant homines quonam modo fieri potuisset. Quidam ex amicis Sassiae recordatus est se nuper in auctione quadam vidisse in rebus minutis aduncam ex omni parte dentatam et tortuosam venire serrulam, qua illud potuisse ita circumsecari videretur. Ne multa, perquiritur a coactoribus: invenitur ea serrula ad Stratonem pervenisse. Hoc initio suspicionis orto et aperte insimulato Stratone, puer ille conscius pertimuit; rem omnem dominae indicavit; homines in piscina inventi sunt; Strato in vincula coniectus est, atque etiam in taberna eius nummi, nequaquam omnes, reperiuntur. Constituitur **181** quaestio de furto; nam quid quisquam suspicari aliud potest? An hoc dicitis, armario expilato, pecunia ablata, non omni reciperata, occisis hominibus, institutam esse quaestionem de morte Oppianici? Cui probatis? quid est quod minus veri simile proferre potuistis? Deinde, ut omittam cetera, triennio post mortem Oppianici de eius morte quaerebatur? Atque etiam incensa odio pristino Nicostratum eundem illum tum sine causa in quaestionem

26. *potuistis*, codd.: *possitis*, Madvig.

postulavit. Oppianicus primo recusavit: postea, cum illa abducturam se filiam, mutaturam esse testamentum minaretur, mulieri crudelissimae servum fidelissimum non in quaestionem tulit, sed plane ad supplic-
182 ium dedidit. LXV. Post triennium igitur agitata denuo quaestio de viri morte habebatur. Et de quibus servis habebatur? Nova, credo, res obiecta, novi quidam homines in suspicionem vocati sunt. De Stratone et de Nicostrato. Quid? Romae quaesitum de istis hominibus non erat? Itane tandem? Mulier iam non morbo, sed scelere furiosa, cum quaestionem habuisset Romae, cum de T. Anni, L. Rutili, P. Saturi, ceterorum honestissimorum virorum sententia constitutum esset satis quaesitum videri, eadem de re triennio post, isdem de hominibus, nullo adhibito non dicam viro, ne colonum forte adfuisse dicatis, sed bono viro, in filii caput quaestionem habere
183 conata est? An hoc dicitis (mihi enim venit in mentem quid dici possit, tametsi ab hoc non esse hoc dictum mementote), cum haberetur de furto quaestio, Stratonem aliquid de veneno esse confessum? Hoc uno modo, iudices, saepe multorum improbitate depressa veritas emergit et innocentiae defensio interclusa respirat, quod aut ii qui ad fraudem callidi sunt non tantum audent quantum excogitant, aut ii quorum eminet audacia atque

1. *postea cum*, edd. : *postea quam*, codd. 4. *tulit*, codd.: *detulit*, Mommsen, Müller. 5. *dedidit*, Arusianus: *dedit*, codd. 6. *denuo*, Halm and edd.: *denique*, codd. 12. *habuisset*, ω: *habuisses*, ST. 18. *conata est*, ω: *conata es*, ST. 19. *ab hoc*, ST: *adhuc*, ω. *esse hoc*, ST: *esset*, ω.

proiecta est a consiliis malitiae deseruntur. Quod si aut confidens astutia aut callida esset audacia, vix ullo eis obsisti modo posset. Utrum furtum factum non est? at nihil clarius Larini. An ad Stratonem suspicio non pertinuit? at is et ex serrula insimulatus et a puero conscio est indicatus. An id actum non est in quaerendo? quae fuit igitur alia causa quaerendi? An, id quod vobis dicendum est et quod tum Sassia dictitavit: cum de furto quaereretur, tum Stratonem isdem in tormentis dixisse de veneno? En hoc illud est quod ante dixi: mulier abundat **184** audacia, consilio et ratione deficitur. Nam tabellae quaestionis plures proferuntur, quae recitatae vobisque editae sunt, illae ipsae quas tum obsignatas esse dixit; in quibus tabellis de furto nulla littera invenitur. Non venit in mentem primum orationem Stratonis conscribere de furto, post aliquod dictum adiungere de veneno, quod non percontatione quaesitum, sed per dolorem expressum videretur. Quaestio de furto est; veneni iam suspicio superiore quaestione sublata; quod ipsum haec eadem mulier iudicarat, quae ut Romae de amicorum sententia statuerat satis esse quaesitum, postea per triennium maxime ex omnibus servis Stratonem illum dilexerat, in honore habuerat, commodis omnibus adfecerat. Cum igitur **185**

3. *eis*, ST: om. ω (cp. § 169). 4. *Larini*, ST: *Larini fuit*, ω. 10. *Stratonem ... dixisse*, ST: *Strato ... dixit*, ω. 13. *vobisque*, edd.: *nobisque*, codd. 15. *nulla littera*, ST: *littera nulla*. ω. 17. *aliquod dictum adiungere*, ST: *aliquid adiungere dictum*, ω. Qy. *aliquid adiungere?* 19. *per dolorem*, ST: *dolore*, ω. 20. *suspicio*, ST: *suspicione*, ω (cp. § 128, *sortitio* ST: *sortitione*, ω).

de furto quaereretur, et eo furto quod ille sine controversia fecerat, tum ille de eo quod quaerebatur verbum nullum fecit? De veneno statim dixit, de furto si non eo loco quo debuit, ne in extrema quidem aut media aut aliqua denique parte quaestionis verbum fecit ullum? LXVI. Iam videtis illam nefariam mulierem, iudices, eadem manu qua, si detur potestas, interficere filium cupiat, hanc fictam quaestionem conscripsisse. Atque istam ipsam quaestionem dicite qui obsignarit unum aliquem nominatim: neminem reperietis, nisi forte eius modi hominem quem ego proferri malim quam neminem
186 nominari. Quid ais, T. Acci? tu periculum capitis, tu indicium sceleris, tu fortunas alterius litteris conscriptas in iudicium adferas, neque earum auctorem litterarum neque obsignatorem neque testem ullum nominabis? et quam tu pestem innocentissimo filio de matris sinu deprompseris, hanc hi tales viri comprobabunt? Esto, in tabellis nihil est auctoritatis: quid, ipsa quaestio iudicibus, quid, amicis hospitibusque Oppianici, quos adhibuerat antea, quid, huic tandem ipsi tempori cur non servata est? Quid istis hominibus factum est, Stratone et Nicostrato?
187 Quaero abs te, Oppianice, servo tuo Nicostrato quid factum esse dicas; quem tu, cum hunc brevi tempore accusaturus esses, Romam deducere, dare potestatem indicandi, incolumem denique servare quaestioni, servare his iudicibus, servare huic tempori debuisti.

10. *qui ... nominatim* (ST), Baiter: *quis ... nominate* ω (*nominat* M). 18. *de*, ST: *ex*, ω (§ 175). 22. *servata*, ST: *reservata*, ω.

Nam Stratonem quidem, iudices, in crucem esse actum exsecta scitote lingua; quod nemo Larinatium est qui nesciat. Timuit mulier amens non suam conscientiam, non odium municipum, non famam omnium, sed quasi non omnes eius sceleris testes essent futuri, sic metuit ne condemnaretur extrema servuli voce morientis.

Quod hoc portentum, di immortales! quod tantum **188** monstrum in ullis locis, quod tam infestum scelus et immane aut unde natum esse dicamus? Iam enim videtis profecto, iudices, non sine necessariis me ac maximis causis principio orationis meae de matre dixisse. Nihil est enim mali, nihil sceleris quod illa non ab initio filio voluerit, optaverit, cogitaverit, effecerit. Mitto illam primam libidinis iniuriam, mitto nefarias generi nuptias, mitto cupiditate matris expulsam ex matrimonio filiam, quae nondum ad huiusce vitae periculum, sed ad commune familiae dedecus pertinebant; nihil de alteris Oppianici nuptiis queror, quarum illa cum obsides filios ab eo mortuos accepisset, tum denique in familiae luctum atque in privignorum funus nupsit; praetereo quod A. Aurium, cuius illa quondam socrus, paulo ante uxor fuisset, cum Oppianici esse opera proscriptum occisumque cognosset, eam sibi domum sedemque delegit in qua cotidie superioris viri mortis indicia et spolia fortunarum videret. Illud primum queror, **189** de illo scelere quod nunc denique patefactum est,

7. *servuli*, cod. Ball, ed. princeps, and Lambinus: *servili*, ω: *servi*, ST. *emorientis*, Müller (cp. § 30). 23. *A. Aurium*, T: *M. Aurium*, S: *Aurium*, ω (cp. on § 23).

Fabriciani veneni. Quod iam tum recens suspiciosum ceteris, huic incredibile, nunc vero apertum iam omnibus ac manifestum videtur: non est profecto de illo veneno celata mater. Nihil est ab Oppianico sine consilio mulieris cogitatum; quod si esset, certe postea, deprehensa re, non illa ut a viro improbo discessisset, sed ut a crudelissimo hoste fugisset domumque illam in perpetuum scelerum omnium
190 adfluentem reliquisset. Non modo id non fecit, sed ab illo tempore nullum locum praetermisit in quo non strueret insidias aliquas ac dies omnes atque noctes tota mente mater de pernicie filii cogitaret. Quae primum ut illum confirmaret Oppianicum accusatorem filio suo, donis, muneribus, collocatione filiae, spe hereditatis obstrinxit. LXVII. Ita quod apud ceteros novis inter propinquos susceptis inimicitiis saepe fieri divortia atque adfinitatum discidia videmus, haec mulier satis firmum accusatorem filio suo fore neminem putavit, nisi qui in matrimonium sororem eius antea duxisset. Ceteri novis adfinitatibus adducti veteres inimicitias saepe deponunt: illa sibi ad confirmandas inimicitias adfinitatis coniunc-
191 tionem pignori fore putavit. Neque in eo solum diligens fuit ut accusatorem filio suo compararet, sed etiam cogitavit quibus eum rebus armaret. Hinc enim illae sollicitationes servorum et minis et promissis, hinc illae infinitae crudelissimaeque de morte

5. *si*, ST: *nisi* (*ni*, Manutius, Lambinus). 8. *scelerum omnium*, ST: *scelere omni*, ω. 11. *strueret filio*, T. 15. *Ita quod*, STFM: *itaque*, some edd. (cp. § 28). 17. *videmus*, M: *vidimus*, STF.

Oppianici quaestiones; quibus finem aliquando non mulieris modus, sed amicorum auctoritas fecit. Ab eodem scelere illae triennio post habitae Larini quaestiones; eiusdem amentiae falsae conscriptiones quaestionum; ex eodem furore etiam illa conscelerata exsectio linguae; totius denique huius ab illa est et inventa et adornata comparatio criminis. Atque 192 his rebus cum instructum accusatorem filio suo Romam misisset, ipsa paulisper conquirendorum et conducendorum testium causa Larini est commorata; postea autem quam appropinquare huius iudicium ei nuntiatum est, confestim huc advolavit, ne aut accusatoribus diligentia aut pecunia testibus deesset, aut ne forte mater hoc sibi optatissimum spectaculum huius sordium atque luctus et tanti squaloris amitteret.

LXVIII. Iam vero quod iter Romam eius mulieris fuisse existimatis? quod ego propter vicinitatem Aquinatium et Fabraternorum ex multis audivi et comperi; quos concursus in his oppidis, quantos et virorum et mulierum gemitus esse factos? Mulierem quandam Larino *adesse*, atque illam usque a mari supero Romam proficisci cum magno comitatu et pecunia, quo facilius circumvenire iudicio capitis atque opprimere filium possit! Nemo erat illorum, paene 193

9. *misisset ipsa*, ST: *ipsa misisset*, ω. 11. *quam*, ST: *cum*, ω (§ 181). 19. *Afraternorum* or *Fraternorum*, codd. 22. *adesse* is my conj.: *Larino atque illam*, codd.: *Larino atque illim*, Madvig: *Larinatem illim*, Müller: *Larinatem illa*, Pluygers: *Larinatem illa via*, Reid. Hartman would delete *illam* and read *Larino atque usque*. 25. *possit*, many codd.: *posset*, STF.

dicam, quin expiandum illum locum esse arbitraretur, quacumque illa iter fecisset; nemo quin terram ipsam violari, quae mater est omnium, vestigiis consceleratae matris putaret. Itaque nullo in oppido consistendi potestas ei fuit, nemo ex tot hospitibus inventus est qui non contagionem aspectus fugeret: nocti se potius ac solitudini quam ulli aut urbi aut
194 hospiti committebat. Nunc vero quid agat, quid moliatur, quid denique cotidie cogitet quem ignorare nostrum putat? Quos appellarit, quibus pecuniam promiserit, quorum fidem pretio labefactare conata sit tenemus. Quin etiam nocturna sacrificia, quae putat occultiora esse, sceleratasque eius preces et nefaria vota cognovimus; quibus illa etiam deos immortales de suo scelere testatur neque intellegit pietate et religione et iustis precibus deorum mentes, non contaminata superstitione neque ad scelus perficiendum caesis hostiis posse placari. Cuius ego furorem atque crudelitatem deos immortales a suis aris atque templis aspernatos esse confido.

195 LXIX. Vos iudices, quos huic A. Cluentio quos*dam* alios deos ad omne vitae tempus fortuna esse voluit, huius importunitatem matris a filii capite depellite. Multi saepe in iudicando peccata liberum parentum misericordiae concesserunt: vos ne huius honestissime actam vitam matris crudelitati condonetis rogamus, praesertim cum ex altera parte totum municipium videre possitis. Omnes scitote, iudices,

10. *nostrorum*, STF. 13. *putat*, Lambinus: *putet*, codd. 21. *quosdam alios*, Lambinus, Classen, Ramsay: *quos alios*, T: *alios*, SF: *quasi* (Classen) *aliquos*, Halm: *quasi alteros*, Reid.

—incredibile dictu est, sed a me verissime dicetur —omnes Larinates, qui valuerunt, venisse Romam, ut hunc studio frequentiaque sua quantum possent in tanto eius periculo sublevarent. Pueris illud hoc tempore et mulieribus oppidum scitote esse traditum, idque in praesentia [communi Italiae pace] in domesticis copiis esse totum. Quos tamen ipsos aeque, et eos quos praesentes videtis, huius exspectatio iudicii dies noctesque sollicitat. Non illi vos de **196**
unius municipis fortunis arbitrantur, sed de totius municipii statu, dignitate, commodisque omnibus sententias esse laturos. Summa est enim, iudices, hominis in communem municipii rem diligentia, in singulos municipes benignitas, in omnes homines iustitia et fides. Praeterea nobilitatem illam inter suos locumque a maioribus traditum sic tuetur ut maiorum gravitatem, constantiam, gratiam, liberalitatem adsequatur. Itaque eis eum verbis publice laudant ut non solum testimonium suum iudiciumque significent, verum etiam curam animi ac dolorem. Quae dum laudatio recitatur, vos, quaeso, qui eam detulistis, adsurgite.

Ex lacrimis horum, iudices, existimare potestis **197**
omnes haec decuriones decrevisse lacrimantes. Age vero, vicinorum quantum studium, quam incredibilis benevolentia, quanta cura est! Non illi in libellis laudationem decretam miserunt, sed homines honest-

6. *communi Italiae pace* I have bracketed: see Notes. *in domesticis copiis esse totum*, codd.: *non domesticis copiis esse tutum*, Madvig. 27. *laudationem decretam*, ST: *laudationum decreta*, *ω*.

issimos, quos nossemus omnes, huc frequentes adesse et hunc praesentes laudare voluerunt. Adsunt Frentani, homines nobilissimi, Marrucini item pari dignitate; Teano Apulo atque Luceria equites Romanos, homines honestissimos, laudatores videtis; Boviano totoque ex Samnio cum laudationes honestissimae missae sunt tum homines amplissimi
198 nobilissimique venerunt. Iam qui in agro Larinati praedia, qui negotia, qui res pecuarias habent, honesti homines et summo splendore praediti, difficile dictu est quam sint solliciti, quam laborent. Non multi mihi ab uno sic diligi videntur, ut hic ab eis universis.

LXX. Quam doleo abesse ab huius iudicio L. Volusienum, summo splendore hominem ac virtute praeditum! Vellem praesentem possem P. Helvidium Rufum, equitem Romanum omnium ornatissimum, nominare! qui cum huius causa dies noctesque vigilaret et cum me hanc causam doceret, in morbum gravem periculosumque incidit; in quo tamen non minus de capite huius quam de sua vita laborat. Cn. Tudici senatoris, viri optimi et honestissimi, par studium ex testimonio et laudatione cognoscetis. Eadem spe, sed maiore verecundia de te, P. Volumni, quoniam iudex es in A. Cluentium, dicimus; et, ne longum sit, omnium vicinorum summam

9. *pecuniarias*, codd. 12. *iis*, ST: *his*, ω (cp. § 12, *eae*, s: *hae*, ω). 14. *Quam doleo* [*quando*, codd.] ... *Vellem praesentem possem*, Classen: *Quam non ... vellem! Quam vellem praesentem posse*, edd. (after Lambinus). 23. *ex*, Graevius: *et*, ω: om. ST.

esse in hunc benevolentiam confirmamus. Horum 199 omnium studium, curam, diligentiam, meumque una laborem, qui totam hanc causam vetere instituto solus peroravi, vestramque simul, iudices, aequitatem et mansuetudinem una mater oppugnat. At quae mater? Quam caecam crudelitate et scelere ferri videtis; cuius cupiditatem nulla umquam turpitudo retardavit; quae vitiis animi in deterrimas partes iura hominum convertit omnia; cuius ea stultitia est ut eam nemo hominem, ea vis ut nemo feminam, ea crudelitas ut nemo matrem appellare possit. Atque etiam nomina necessitudinum, non solum naturae nomen et iura mutavit,—uxor generi, noverca filii, filiae pelex; eo iam denique adducta est ut sibi praeter formam nihil ad similitudinem hominis reservarit.

Qua re, iudices, si scelus odistis, prohibete aditum 200 matris a filii sanguine, date parenti hunc incredibilem dolorem ex salute, ex victoria liberum; patimini matrem, ne orbata filio laetetur, victam potius vestra aequitate discedere. Sin autem, id quod vestra natura postulat, pudorem, veritatem, virtutemque diligitis, levate hunc aliquando supplicem vestrum, iudices, tot annos in falsa invidia periculisque versatum, qui nunc primum post illam flammam aliorum facto et cupiditate excitatam spe vestrae aequitatis erigere animum et paulum respirare a metu coepit, cui posita sunt in vobis omnia, quem servatum

1. *Horum omnium*, ω: *omnium horum*, ST. 15. *ut*, ω: *uti*, T. 16. *reservaret*, ST. 22. *veritatem*, ST: *bonitatem*, ω.

201 esse plurimi cupiunt, servare soli vos potestis. Orat vos Habitus, iudices, et flens obsecrat, ne se invidiae, quae in iudiciis valere non debet, ne matri, cuius vota et preces a vestris mentibus repudiare debetis, ne Oppianico, homini nefario, condemnato iam et mortuo, condonetis. LXXI. Quod si qua calamitas hunc in hoc iudicio adflixerit innocentem, ne iste miser, si, id quod difficile factu est, in vita remanebit, saepe et multum queretur deprehensum esse illud quondam Fabricianum venenum. Quod si tum indicatum non esset, non huic aerumnosissimo venenum illud fuisset, sed multorum medicamentum laborum; postremo etiam fortasse mater exsequias illius funeris prosecuta mortem se filii lugere simulasset. Nunc vero quid erit profectum nisi ut huius ex mediis mortis insidiis vita ad luctum conservata, mors
202 sepulcro patris privata esse videatur? Satis diu fuit in miseriis, iudices, satis multos annos ex invidia laboravit. Nemo huic tam iniquus praeter parentem fuit cuius non animum iam expletum esse putemus. Vos, qui aequi estis omnibus, qui, ut quisque crudelissime oppugnatur, eum lenissime sublevatis, conservate A. Cluentium; restituite incolumem municipio; amicis, vicinis, hospitibus, quorum studia videtis, reddite; vobis in perpetuum liberisque vestris obstringite. Vestrum est hoc, iudices, vestrae dignitatis, vestrae clementiae; recte hoc repetitur a vobis, ut

7. *miser si*, ST and others; *miser iudices si*, some codd. and edd. 12. *laborum*, codd.: *maerorum*, edd.: see note. 13. *fortassis*, codd.: see on § 144. 14. *se*, om. ST.

virum optimum atque innocentissimum plurimisque mortalibus carissimum atque iucundissimum his aliquando calamitatibus liberetis, ut omnes intellegant in contionibus esse invidiae locum, in iudiciis veritati.

2. *carum,* codd.: *carissimum,* Lambinus and edd. Qy.? *carum atque iucundum*: cp. § 100, where the codd. (except ST b^2) have *honestissimis* for *honestis,* and § 161 *incommodis* (M) for *incommodissimis* (STF).

NOTES.

I. § 1. **altera ... altera** are undoubtedly nominatives. Ramsay and Faussett agree in construing as ablatives, supplying (after Classen) 'accusator' as the subject of *videbatur*, on the principle that Latin prefers a personal to an impersonal agent. But the rule is not invariable, and the impersonal subject recurs immediately below, *altera* (pars) ... *sit habitura*, § 2. So also § 114, *cuius accusatio rebus iudicatis niti videbatur.*

invidia iam inveterata iudicii Iuniani, 'the time-honoured odium of the trial before Junius.' The genitive indicates the source or occasion of the odium, prejudice, or unpopularity. Cp. *pro Rab. Perd.* § 2, *invidia vitae*, 'odium excited against him by his life.' For the facts as to the previous trial (of Oppianicus), which had taken place eight years previously (B.C. 74), see Introd., pp. xxi.-xxix.

consuetudinis causa, 'as a matter of form.'

rationem criminum, 'the question of the charges.' Though *ratio* is used here with a reminiscence, as it were, of its origin (*reor*, 'consideration'), it is often employed periphrastically, so that *rationem criminum* might be taken as practically equivalent to *crimina*. See on *investigandi rationem*, § 23.

lege. For the Lex Cornelia de Sicariis et Veneficis, see Introd., p. xxx.

haec quaestio, 'this court of inquiry.' Cp. § 147, and often elsewhere. It would appear that in this court judges administered the 'Lex Cornelia,' under which the trial of Cluentius was instituted: two of the praetors—Plaetorius and Flaminius—dealing with charges of assassination (*inter sicarios*, § 147), while Q. Voconius Naso was responsible for the working of that part of the statute which was directed against poisoning and judicial conspiracy. — *Quaestiones Perpetuae*, or Standing Commissions to try criminal cases, were instituted for the first time by L. Calpurnius Piso, in

B.C. 149, to deal with the growing number of cases brought under the law of *Repetundae.* Before that date offences had been disposed of as they occurred, by special commissions appointed *ad hoc.*

invidiae et criminum. In his 'exordium' Cicero draws a clear line of distinction between the prejudice arising out of the bribery scandal (*invidia*) and the charges directly urged against his client (*crimina*). The whole oration is modelled on this division, the first part of it dealing with the *invidia* (§§ 9-142), and the second part, more briefly, with the *crimina* (§§ 161-194).

reticendo, holding back what ought to be said: **dicendo**, speaking when speech is superfluous and misleading. Tr.: "So that it may be evident to all that I have been as little desirous of evading the facts by suppression as of darkening them by a cloud of words." Contrast with this appearance of candour Cicero's subsequent boast, 'that he had thrown dust in the eyes of the jury at the trial of Cluentius,' *se tenebras offudisse iudicibus in causa Cluenti* (Quintilian, ii. 17, 21).

§ 2. et ea quae, etc. This clause is epexegetic (§ 119): 'that part, namely.' Cicero's language has been taken as implying that the charges of poisoning alone were directly before the court, but the probability is that the orator is here foreshadowing the technical defence which he afterwards sets up (§§ 143-160), viz. that Cluentius, as a Roman *eques*, is not amenable to the part of the statute on which Accius had founded his charge of bribery and corruption.

iudicii vestri, 'your court.' *Iudicium* is either 'trial,' 'law-court,' 'bench of jurors,' or 'verdict,' according to the context.

per mihi brevis, an instance of *tmesis*, which is frequent in Cicero in words compounded with *per*: cp. *per mihi gratum feceris.*

contionibus, here of public meetings. The same phrase recurs in §§ 93, 95: cp. §§ 78, 110, 202: for *contio* = 'harangue,' see on § 103. The reference is to the agitation carried on by the tribune L. Quinctius (§§ 79, 93) for the purpose of securing the restoration to the *equites* of that monopoly of the law-courts which Sulla had taken away from them. See Introd., p. xiv., xv.

§ 3. illa res ... quod vos de criminibus ... de invidia autem, 'the consideration that, *whereas* in listening to accusations..., in dealing, on the other hand, with prejudice,' etc.

omnium. I have adopted (with Müller) the reading of

the Turin palimpsest (P), against all the other MSS., which give *omnem*. *Eorum omnium* seems to resume *de criminibus* more emphatically than *omnem*.

oratore, counsel for the defence, like *defensor* immediately below. In hearing charges directly preferred (*crimina*), the jury looks to the defendant's advocate for a complete and comprehensive refutation, without any idea of 'making a present to the accused of more in the direction of, or in order to secure, acquittal' (*ad salutem*), *i.e.* of crediting him with a greater degree of innocence than his counsel can show warrant for. For this use of *ad*, cp. § 129, *ad perniciem innocentis fidem et religionem pecunia commutare*: *Murena*, § 29, *dicendi consuetudo longe et multum isti vestrae exercitationi ad honorem antecellit*: *ibid.* § 38, *hoc quanti putas esse ad famam hominum ac voluntatem.*

de invidia autem, etc. Whereas cases such as have just been described turn upon questions of fact, and must be decided by impartially weighing the evidence put forward, the less tangible issues resulting from *invidia* ought to lead a jury to consider more what an advocate *ought to say* (*quid oporteat dici*) than the pleadings which he actually advances (*quid dicatur a nobis*). The language of proof (*sic ut vos doceamus*, below) is definite: the language of entreaty (*sic ut oremus*) leaves something to the hearer, who must supplement the necessarily imperfect statement of an advocate by broader and more general considerations. Cp. the contrast between *nostri ingenii* and *vestri auxilii* in § 4. Such considerations, the speaker goes on to say, are of importance as bearing on the general interest (*causa communis*: cp. *communibus invidiae periculis*, § 8): the *crimina*, on the other hand, affect only the defendant himself (*Cluenti proprium periculum*).

inter vos disceptare, 'to put the case to yourselves,' 'determine the question among yourselves.' On this reading we must give *disceptare* the sense of debating or discussing a doubtful point (*dis-capio*, lit. 'to seize hold of and separate'): cp. *Acad.* ii. § 126, *inter se disceptare*; Livy, xlv. 15, 5, *haec inter ipsos disceptata.* So *disceptatio veritatis*, § 81. The word is, however, frequently used (absolutely) in the sense of 'to arbitrate' (*e.g. iudices, vobis disceptantibus*, *Verr.* iii. § 169), and this may have suggested the attractive variant *inter nos disceptare*, a construction which is common enough in later literature, if not found in Cicero himself.

a nobis, of counsel generally, including, of course, the speaker: cp. the use of *adhibemur*, §§ 139, 144; *debemus*, § 145. There is a similar (particular) application of a general reflection in § 51: *solere laudi dari etiam si ... non defuissem.*

fides imploranda, 'must appeal to you for protection,' the protection which your sense of honour will prompt you in the circumstances to accord: cp. *vestri auxilii,* § 4. The expression is a very common one: cp. Plaut. *Rudens,* 622, *vostram iterum imploro fidem* ; Cic. *Brut.*, § 90 ; *Verr.* i. § 25.

sine vestro ac sine, etc., 'without your assistance and that of your honourable court.' There is no need for deleting *ac sine,* as most editors have done: *ac* (though suspected by Classen) recalls Cicero's use of *hic et talis, e.g.* Har. Resp. § 7. For the emphatic repetition cp. § 95, *sine vestra sapientia ac sine iudiciorum remediis* ; § 10, *pro incolumi et pro vivo. Tales viri,* or *illi* (*hi*) *tales viri* is a complimentary expression of frequent occurrence: cp. §§ 50, 186, and *hi iudices tali dignitate praediti,* § 147.

§ 4. **Equidem,** though always found (in Cicero) along with the first person singular, is not compounded of *ego quidem,* but is an independent particle of asseveration. Tr. 'Really,' or 'I protest.'

agitatam ... iactatam ... commemoratam : 'bruited about,' or 'discussed' (§§ 88, 139), 'canvassed,' 'brought up.' There is a similar enumeration in *de Or.*, i. § 31, *populi motus, iudicum religiones, senatus gravitatem unius oratione converti.* For the reference in the senate, see § 136.

vestri auxilii est, a form of the possessive genitive : 'it involves, or implies, help from you.' Cp. *contentionis,* § 2 ; *quantae divinationis est,* § 131 : so § 49, *suae dignitatis esse arbitrabantur* ; § 202, *vestrae clementiae.*

communi incendio : a fire which might consume everybody alike—speaker and hearers as well as Cluentius. Cp. *causa communis,* § 3 : *de communibus invidiae periculis,* § 8.

II. § 5. **imperitorum,** 'undiscerning' or 'uninstructed persons—'laymen,' as contrasted with *prudentium,* 'those who know,' 'far-sighted and intelligent men.' Cp. § 105, and *pro Milone,* § 62.

ab ingeniis ... repudietur : 'let it be put far from their understandings' rather than 'let it be spurned by.' Similarly, § 201, *cuius vota et preces a vestris mentibus repudiare debetis.*

ut in iudiciis, etc. This clause expands and explains *illa definitio.*

sine invidia, 'though there be no bad feeling,' *i.e.* without reference to prejudice: **sine culpa,** 'where there is no guilt.' For the antithetical construction (ἀντιμεταβολή, *commutatio*), cp. *de Or.* i. § 180, *iuris peritorum eloquentissimus, eloquentium*

iuris peritissimus : and such expressions as "Painting is mute poetry, poetry is eloquent painting."

ponatur, 'is set aside,' 'laid at rest,' 'dispelled.' Cp. *ponere inimicitias.*

§ 6. de ipsa causa : 'about the facts of the case.'

incipio. For the tense cp. § 8, *ante quam de causa dico.* Similarly § 117, and *pro Milone*, § 7, *Sed ante quam ad eam orationem venio ... videntur ea esse refutanda*, where Dr. Reid says that the future after *ante quam* "is Plautine and Terentian but not classical."

haec postulo. The subsequent government of *postulo* should be carefully noted, embodied as it is in the three component parts of the period (α) *primum ... ut ne quid ... adferatis* (cp. on § 16); (β) *deinde ... ne repugnetis*; (γ) *tum autem ... ne ipsi ... subiciatis.* In the first part I have altered the printing of the text so as to show that *id* is not a direct accusative after *postulo* (like the *haec* that precedes it), subsequently expanded into *ut ne quid adferatis* : the whole phrase *id quod aequissimum est* should be taken together as appositional and parenthetic.

auctoritatem, of the moral influence that goes with official position.

nisi ... iudicabimus ac si ... deferemus. *Ac* is omitted by all editors (except Faussett) as not found in the best MSS., and it has been argued that one or other of two clauses which are practically equivalent must be an adscript. But the two are mutually complementary, and Mr. Faussett aptly compares *ne repugnetis eamque ... remittatis*, below ('instead of resisting ... dismiss').

convellet ... labefactabit. The first is the stronger word of the two, denoting as it does the effort to tear up or pluck out by a straight pull, whereas *labefactare* is to dislodge by shaking. The words are found in reverse order in the parallel passage, *ad Fam.* v. 13, 2, *quae cogitatio cum mihi non omnino excidisset ... vi tamen tempestatum et concursu calamitatum erat aliquantum labefactata atque convulsa* : cp. *pro Rab. Perd.*, § 3. Tr. 'If reason uproots, if discourse undermines, or else if truth wrests from you any impressions you may have already formed.' Literally, 'if you *have* already formed any impressions, do not resist if reason uproots,' etc. The two conditional clauses are not co-extensive, the first (*si ... comprehendistis*) being wider than the second (*si ... extorquebit*). Similarly, § 158 : cp. *de Off.* iii. § 30, *sin autem tu is sis qui multam utilitatem rei publicae adferre possis, si quid ob eam causam alteri detraxeris, non sit reprehendendum.* **Ratio** = your

understandings ('thinking faculty'; *reor*), **oratio** = my argument (*de Fin.* iii. § 10; *pro Sulla*, § 4), **veritas** = the true state of the case.

ne repugnetis. The construction still includes the *ut* which follows *postulo* and introduces *adferatis.* Cp. *in Verr.* ii. § 148, *Postulant enim non uti ne cogantur statuere: quid igitur? ut ipsis ne liceat.*

animis ... remittatis. A preposition is more usually found along with such a construction as this (*ex animo dimittere*): *Lucr.* vi. 68, *quae nisi respuis ex animo, longeque remittis.* Tr. 'renounce it willingly, or at least with resignation.'

tum autem. *Tum* resumes *primum ... deinde*, as often, and does not introduce the *cum* which follows it. The absolute use of *diluam* is explained by its proximity to *dicam* (both futures): cp. *Verr.* act. pr. § 33 *dicendo ac diluendis criminibus contendere.*

ad extremum, 'till the end,' as *Caec.* § 28, *testis exspectatus et ad extremum reservatus*: more usually, 'at the last,' § 50.

cum peroraro, 'when I have finished pleading': so §§ 59, 145. The word is used in another sense in §§ 164, 199, where it means to plead a case from beginning to end.

animo is quite in place, though most editors bracket the word. It repeats the idea contained in *taciti*: cp. Lucr. v. 1090, *Illud in his rebus tacitus ne forte requiras.* Cicero is asking the jurors not to place counter-arguments before their own minds (*taciti*) as he went along; but, when they came to consider their verdict, to 'mentally demand that any real omission he might have made should be supplied.' Not till he reached the end of the case was his audience to be at liberty to decide that he had not met every objection, or that he had 'burked' any essential point. Müller adopts the emendation *a me* for *animo* (*aĩo*). I suggest rather *animo a me*: *a me* may easily have fallen out (as in ST at § 29, 12) after the contracted form of *animo.*

III. **§ 7. ex contraria parte audiatur,** a case which 'you have heard stated by the other side' for eight years together (*continuos*). And the misrepresentation is not over yet; hence the present (*audiatur*) of what includes the time of speaking —as often with *iam dudum*, etc., *e.g.* § 63.

tacita of thought which finds no expression: cp. § 63 *tacita vestra exspectatio.* See my note on Quintilian x. 1, § 18.

reperiatur. The subjunctive may be compared with *audiatur* above, *intellego* and *intellegatis* being the important

words in both parts of the sentence. *Audiatur* is subjunctive because the clause forms part of what is passing in the speaker's mind ('reported thought'): *reperiatur* is also subjunctive because it is part of what the speaker wishes to convey to the minds of his hearers. On the other hand, the indicative is allowed to stand in *potuero* immediately below, in spite of the indirect form of the sentence, just as if it had been *hic locus ... perfugium erit*: compare *facesseretur ... voluerit*, § 148.

illi, 'the other side.'

portum ac perfugium, a sort of alliterative hendiadys: 'a haven of refuge.' Cp. *vim atque victoriam*, § 25.

§ 8. crimen, *i.e.* the charge of bribery and corruption, which is certainly here spoken of as an actual part of the indictment against Cluentius: cp. *Cluentianae pecuniae crimen*, § 125.

probata, 'made good,' 'successfully argued.

veteris istius criminis. This reading is supported by *multorum annorum accusationi* below, 'an indictment which has been going on for a number of years.' For *istius*, ST give *ipsius*, and this led Kayser to reject *veteris* as a gloss, inserted after the original (?) *ipsius* had been converted into *istius*: on his reading *ipsius criminis* = 'the charge on its merits,' the actual issue as contrasted with the surrounding circumstances.

IV. **§ 9. quo** = *ut eo*, 'that thereby.' Cp. § 131, *quod is pecuniam accepisset quo innocentem condemnaret*; § 148, *quo quis iudicio publico condemnaretur*; § 140, *quo animi ... incenderentur.* The usage is common enough, but more frequently a comparative is attached to the relative pronoun.

Statium Albium. The full name was Statius Albius Oppianicus.

atrocitatis atque invidiae, 'relentless animosity.' For such double expressions, see on *manibus et gremio*, § 13.

praeiudicia, 'previous verdicts.' In the sense of 'prejudice' the word is unknown in Latin.

non modo ab isdem, 'I will not say by themselves.' In this familiar construction the negative is omitted (after *non modo*) in the first clause, the predicate being common to both: cp. §§ 68, 89, 93, 120, 178.

a Cluentio, 'on the side of Cluentius,' § 93. This rendering seems to be required by the emphatic antithesis between *a Cluentio* and *contra Cluentium*; otherwise the simpler rendering, 'by Cluentius,' might be supported by § 30, *iudicium ab hoc non esse corruptum*: cp. § 63. Similarly *Lucret.* i. 693,

Nam contra sensus ab sensibus ipse repugnat; and § 93, below, *non modo dicendi ab reo.* Cp. the loose quotation in Quint. iv. 5, 11, *non pro Cluentio sed contra Cluentium.*

quid res ipsa tulerit, 'the actual facts of the case.' Cp. *ad Fam.* i. 7, 6, *quid res, quid causa, quid tempus ferat tu optime perspicies. Res ipsa* = 'the bare facts,' opposed to *quid error adfinxerit,* the 'imported element' of misrepresentation, and *quid invidia conflarit,* the 'forgeries of popular prejudice.'

§ 10. certissimis criminibus, 'well-attested charges.' For this use of *certus* cp. *index non incertus,* § 21.

descenderit, sc. *in forum.* In the same way we speak of members of Parliament 'going down to the House.' The subjunctive should be noted: it seems to present the fact under the guise of a statement for which the speaker makes himself responsible. Müller would, however, read *descendit,* and this may easily have been the original reading: in § 25, 15, and again in § 96, 10, all MSS. wrongly give *arbitraretur* for *arbitretur,* some scribe having imagined that he saw the mark of a contraction over the *r.* Cp. *pro Sulla,* § 38, where the codd. wrongly give *responderit* for *respondit.*

faciendum ... est ut: see on § 111.

fide atque officio defensionis, 'considerations of honour and duty to the defendant.' *Fides defensionis* = 'the honour of an advocate,' as § 118, *fides huius defensionis.*

in praesentia, 'for the present,' § 195. Lexicographers now treat this phrase as an instance of *in* with the ablative: cp. *in praesenti.* Cicero also has *in praesens tempus.*

si ... satis facere non potuero, 'if I am not able to meet your views: *satis facere* = 'to do one's best for a person,' or 'to fulfil one's obligations to him.' The omission of *satis facere* here (with ST) would give the sentence a more idiomatic turn: cp. *si oblivione non posset,* § 18. Baiter therefore brackets *satis facere.* But for instances of repetition of the same word in different clauses, cp. *arbitrabantur,* § 50; *sententia absolutus,* § 67; *hoc,* § 30.

tamen multae mihi, etc. This courteous phrase has certainly an awkward look. Cicero seems to be telling the younger Oppianicus that he must not mind if he stretches a point in favour of his client.

illud ... dubitare ... dicere. The constr. with *quin* (of doubt as to whether a thing is as stated) occurs § 48, *illud quis est qui dubitet quin,* etc. For the difference, see Dr. Reid's note on *pro Sulla,* § 4; and cp. on Quintilian, x. 1, § 73.

incolumi, of one who is 'unattainted.' The repetition of the preposition *pro*, which occurs in all the MSS. except one, is not unnatural: it emphasizes the second of the two points which made Cluentius a contrast to Oppianicus.

pro quo dicimus. This phrase brings the question out of the region of the abstract (*quis ... dubitare debeat contra damnatum ... pro incolumi ... dicere? cum illi in quem dicitur*) into the region of the concrete, *i.e.* 'my client Cluentius.'

nihil possit offensionis accipere, 'cannot meet with a reverse.' So *offendere*, §§ 63, 98: *offensio* is a '*blow* in the shape of an adverse judgment' (Faussett). The alternative reading, *huic ... nihil possit offensionis accedere*, merits consideration, and cannot be dismissed on Classen's argument that *accedere* would imply that Cluentius had already suffered a similar reverse. In *Att.* i. 16, 9, we may render *dolor accessit bonis viris* by 'the *boni* have received an *added* stimulus of resentment,' but in § 83 of this speech the word is used simply as the opposite of *discedere*: *ab eo invidiam discedere aliquando ad quem numquam culpam accessisse videtis.*

molestia. The alternative reading here is *dolore*, which occurs in the majority of the MSS.: for the source of the confusion, see on *domo*, § 27.

§ 11. ostentatione of his desire to 'figure' as a prosecutor: **gloria** = 'self-conceit,' 'vainglory,' 'bumptiousness.'

longius, adverb: cp. § 58, *alte petito prooemio.* For *petam*, Quint. iv. 1, 79, gives *repetam*, which may be right, as the prefix *re* is a variable quantity in MSS., *e.g.* in § 24, 19 P has *renuntiant*, rightly; ST *nuntiant.* Cp. § 66 and *ad Fam.* i. 9. 4, *altius paulo rationem consiliorum meorum repetam necesse est.* On the other hand, *pro Caec.* § 10, *si forte videtur altius initium rei demonstrandae petisse.*

municipii Larinatis. Larinum (now Larino) was a Samnite township in the territory of the Frentani, due east of Rome, and about 12 miles from the coast.

nobilitate, 'noble birth.' So *nobili*, at the end of the section, 'of high rank': cp. §§ 69, 109, 112.

facile princeps. *Facile* may here be an 'accretion': its omission in Quint. iv. 2, 130, as well as in ST, is significant. Cicero is often content with *princeps* alone in similar passages: *Quir.* § 16; *Verr.* iii. § 56; *Phil.* xiii. 30. For *facile princeps*, cp. *Verr.* i. § 64, *de Or.* iii. § 60, *de Div.* ii. § 87: *facile primus*, *Rosc. Am.* § 15.

Sulla et Pompeio consulibus, B.C. 88. At Rome the year was chiefly remarkable for the collision between Marius

and Sulla, which resulted from the attempt of the tribune Sulpicius to transfer the command of the war against Mithridates from the latter to the former. Sulla's colleague was Q. Pompeius Rufus.

ut tum habebatur. This phrase was inserted to prepare the audience for what followed. The popular opinion of Aurius Melinus afterwards changed considerably.

inter suos, 'in his own community' (*domi suae*), as again § 196, *nobilitatem inter suos tuetur*: in the text the use of the reflexive is unambiguous, though Melinus is not formally the subject of the sentence. Cp. § 23, *domi nobilis. In primis* (*imprimis*) qualifies the adjectives: cp. *in Verr.* ii. § 69, *homo domi suae cum primis locuples atque honestus.*

§ 12. mulieris importunae, 'an unnatural woman.' *Importunus* is an interesting word. In its origin (*in* and *portus*, πόρος), it meant 'hard of access,' 'unsuitable,' 'unfavourable': its opposite is *opportunus.* It is commonly used in Cicero both of things and persons ('unnatural,' 'monstrous'): for its application to Sassia, cp. § 177, *crudelis atque importuna mulier.* So *de Fin.* i. § 35 (of Manlius, who executed his own son), *nollem me ab eo ortum tam importuno tamque crudeli.*

non solum dedecore, verum etiam scelere coniuncta, 'involving sin as well as dishonour.' The ablative (without *cum*) should be carefully noted; it is different from *nuptiae ... sceleris societate coniunctae* in § 35, where the ablative is instrumental: companionship in crime was the 'bond of union' in the alliance. An analogous use of the ablative occurs, *Or.* § 58, *insignis improbitas et scelere iuncta,* though there it would be easy to read *sceleri*: more crucial instances are Phil. iii. § 35 and v. § 20 (cp. *de Or.* iii. § 55).

in omni causa, 'throughout the case': cp. *neque umquam ... audiet,* immediately below. This is the reading of the best MSS., and seems appropriate to the context. *Nominis causa* is also well supported, and gives a good sense with the *quo enim ipsum nomen* clause following. Cicero says that he will call Sassia a 'mother' *for the sake of the name, i.e.* to excite horror in the breasts of his audience at her *unmotherly* conduct. The intervening *tametsi* clause, however, seems to be somewhat against *nominis causa.*—The omission of the words in Quint. *Declam.* 398 (Ritter, p. 441) suggests that *nominis causa* may have been an adscript, emended into *in omni causa* in the recension which is embodied in ST.

neque umquam illa ita ... audiet: lit. 'nor shall she ever so hear ... as to forfeit,' *i.e.* in my narrative she shall still retain her natural title. Cf. *bene, male audire*: εὖ, κακῶς ἀκούειν.

ipsum nomen, *i.e.* 'the name taken by itself,' without going any further, as it were, into the associations of motherhood. Cp. *res ipsa,* § 9 ; *in ipso fraterno parricidio,* § 31, § 81, § 109 ; *id ipsum,* § 131 ; and *passim.*

nunc cum maxime (sometimes simply *cum maxime*), 'at this very moment': cp. *Liv.* xxix. 17, 7, *quae aut ab illis passi sumus aut ... nunc cum maxime patimur.*

interfectum cupit. This construction denotes 'impatience of anything except entire fulfilment' (Gildersleeve-Lodge). Cp. *Fin.* iv. § 66 [*Patriam*], *exstinctam cupit.* The usage is frequent in comedy,—oftener with *volo* than *cupio.* Cp. *servatum esse plurimi cupiunt,* § 200.

Ea igitur mater. *Igitur* resumes after the lengthy digression.

se ... continebat. The best MSS. give *continebat*: *se* is Baiter's addition, though he placed it after *cupiditate.* Cp. *Parad.* § 21, *qui se in aliqua libidine continuerit in aliqua effuderit.* A common variant is *continebatur,* which must be explained as a middle: cp. *Leg. Agr.* ii. § 97, *quibus illi rebus elati ... non continebuntur, progredientur.*

inflammata, best construed as nominative, 'to be carried away in the heat of her evil passion.' For this use of *ferri* cp. § 199, *ferri crudelitate et scelere*: *efferri* is also common in Cicero, especially of joyful emotion.

non pudor, non pudicitia, 'no considerations of modesty or purity.' The words *non pudicitia* do not occur in the two best MSS., but they may easily have fallen out: for the collocation cp. *pro Milone,* § 77, *Phil.* ii. § 15. *Pudor* is the moral principle: *pudicitia* the condition of chastity which results.

pietas, the instinct of natural affection.

dolor, not 'grief' but 'indignation'—the sting or pang caused by a wrong done: Virg. *Aen.* ii. 594, *quis indomitas tantus dolor excitat iras?*

maeror, of the outward signs of grief, as *maerore et lacrimis,* § 13 below. Cp. *Tusc. Disp.* § 18, *maeror aegritudo flebilis.*

§ 13. consilio ac ratione firmatum. The young man was not yet 'strong in the strength of wisdom and understanding.' So *ratio* is opposed to *amentia,* § 15 below.

illa aetas, 'young men like him': cp. *ut aetas illa fert,* § 168.

capi, 'to be ensnared': so § 36, *capere Asuvi adulescentiam.*

illo communi dolore muliebri, 'the anguish which any woman would feel.' *Dolor* again of indignant resentment, as above.

in eius modi iniuriis, '*at* so foul a wrong,' like ἐπί with the dative in Greek. Cp. Virg. *Aen.* ii. 540, *Non ... talis in hoste fuit Priamo*, 'in the case of,' 'in dealing with'; and § 51 below, *etiam si in minus firmis causis hominum periculis non defuissem.* See also on *in eadem iniuria*, § 32.

pelicatum. *Pelex* is always used with a reference to the injured wife: cp. § 199, *filiae pelex* 'the mistress of her daughter's husband.'

scelere, a strong word. Her daughterly instincts, as well as her own purity, revolted from the 'sin' of even protesting where her mother was concerned: such a protest might seem to involve *impietas.*

maerore et lacrimis. This is classed by Roby (§ 1228) as an ablative of cause: her sorrow made Cluentia an old woman before her time. Cp. Sest. § 110, *otio et tranquillitate reipublicae consenescebat.*

manibus et gremio, one of Cicero's double phrases: tr. 'clasped in his arms.' The similar phrase *sinu complexuque* is very frequent in Cicero. For the duplication cp. *atrocitatis atque invidiae*, § 9; *regionis et vicinitatis*, § 11; *vi ac necessitate*, § 19; *consuetudinem audaciamque*, § 33; *vita et audacia*, § 50; *mente et cogitatione*, § 69; *vim atque victoriam*, § 25.

§ 14. Ecce, 'But, lo!' 'Hey, presto!' So § 75, *ecce tibi eiusmodi sortitio. Divortium* in the text is nominative, as always in classical Latin. In Plautus (cp. Virg. *Ecl.* v. 66) *ecce* often takes an accusative of the object, as *Ecce me!*: cp. *em* in such phrases as *Em tibi hominem!* The nominative implies a statement or judgment; the accusative an exclamation (cp. *O scelus*, § 15; *O viros fortes*, § 153). For *ecce autem* cp. Plaut. *Trin.* 389, *ecce autem in benignitate repperi negotium*: Virg. *Aen.* ii. 203.

ut in tantis iniuriis, not 'considering the magnitude of her wrongs' (Faussett), but to be taken closely with *non invita*, 'as was natural in a case of so foul a wrong,': so *ut a viro non libenter* = 'reluctantly, as was natural in leaving a husband.' The difference will be made apparent by contrasting *Satis ut in re trepida impavidus*, Liv. xxii. 5 (*i.e.* so far as was possible, *considering* the crisis), and *Senatus, ut in trepidis rebus, dictatorem dici Mam. Aemilium iussit*, id. iv.

17, 8 (*as was natural*, or usual, in a crisis): cp. xxvi. 8, 2. An exact parallel to *ut a viro non libenter, sc. discedit*, may be found in Liv. xxi. 12, 4, *condicionesque tristes ut ab irato victore ferebantur.* Cp. on § 58.

victrix filiae non libidinis. These words have the appearance of an adscript, inserted in the margin by some moralist who wished to give point to *exsultare, triumphare*, and afterwards connected with what follows by *Itaque.* Omitting *itaque*, some editors (Baiter) have put a full stop at *coepit*, and have construed the words *victrix ... libidinis* with *noluit* in what follows. In the text it has been considered safest to follow the tradition of the majority of MSS. (and so, virtually, Classen and Ramsay). Dr. Reid thinks some corruption may lurk in *non*, which may represent a word that had been chosen to contrast with *victrix*, possibly *serva*: cp. *in Verr.* ii. 4, 112, and ii. 1, 58. Assuming that the words are genuine, I would suggest that, in what follows, Cicero may have written *Ita cum diutius ... nolit ... iubet. Ita cum* may have resulted (through *Ita quod*) in *Itaque* (§ 28, 26; § 23, 9; § 98, 12): for *nolit* cp. § 149, 8.

laetitia ... gaudio. The former is the stronger word. In his note on *Mil.* § 21, Mr. Clark refers to Tusc. iv. 13, where Cicero "defines *laetitia* as connoting extravagant joy, while *gaudium* is used of a rational and tranquil emotion. Hence *ib.* § 66, *gaudere decet ... laetari non decet.*"

lectum illum genialem, not the *cubile* of § 15, but the bed which stood in the *atrium* of a Roman house, not for actual use, but as a symbol of the married state. Cp. Hor. *Ep.* i. 1, 85, *lectus genialis in aula est.*

nullis auspicibus, 'with no auspicious rites,' lit. 'no soothsayers.' For *nullus* c. abl. = 'without' cp. *nullo teste, nullo indice*, § 38. The conservatism of the Romans is nowhere more conspicuous than in their retention of such religious formalities: Cic. *de Div.* § 28, *nuptiarum auspices ... re omissa nomen tantum tenent.* Cp. Juv. *Sat.* x. 336, *veniet cum signatoribus auspex.*

nullis auctoribus, 'with no one to sanction the alliance,' no consenting witnesses. Sassia had nobody to 'give her away.' Cp. Ter. *Adelph.* 671.

VI. **§ 15. praeter hanc unam**, probably an instance of brachylogy = *praeter scelus huius unius mulieris.* Commentators have failed to note, however, the remarkable variant of ST, *praeter hanc causam unam.* Unless the final *c* in *hanc* can be taken as explaining the intrusion of *causam* (cp. the variants *exemplis* and *exempli causa*, § 119), it is tempting to

suggest *praeter hanc causam unum in omni memoria inauditum.* For *unus ... omnis,* cp. Scaur. § 5, *unum ex omni memoria sceleratissimum.*

in omni vita, 'in all experience.' Tibull. ii. 1, 37, *his vita magistris Desuevit querna pellere glande famem*: Virg. *Aen.* vi. 663, *Inventas aut qui vitam excoluere per artes*: Mart. viii. 3, 20, *Agnoscat mores vita legatque suos* = human life generally.—Nettleship.

Nonne timuisse, the exclamatory, indignant infinitive: cp. Lucret. ii. 16, *Nonne videre nil aliud sibi naturam latrare!* More commonly *non*: as *de Fin.* iv. 27; Livy ix. 11, *ad fin.* The usage frequently occurs also in the comic poets. Cp. *Tene hoc dicere,* § 84.

§ 16. nihil ... gravius ... quam ut illa ne uteretur, 'no stronger step than merely to refrain from all intercourse with her.' Here *ut ne* is explicative of *nihil* (cp. Tac. *Ann.* i. 64, *non aliud repperit quam ut hostem silvis coerceret*), *ut* leading off in a general way as if the clause were to be positive in form (*e.g. quam ut illam repudiaret*), and then turning to a particular negative. Cp. *Phil.* ii. § 32, *Scribam ad illos ut, si qui forte,* etc. ... *ne cui negent.* In many instances *ut ne* is found for *ne*, with apparently no difference of meaning: *e.g.* § 74, *convicium fecit ut ne sine illo iretur.* See also on § 168, where we have a case of *ne* attaching closely to a particular word, *ut ne cui.*

§ 17. cuiuscumque modi sit mater, *i.e.* no matter how depraved, how unmotherly. So *Fin.* v. § 49, *cuiuscumque modi sint.* This is the reading of ST: the variant *cuiusmodicumque mater sit* shows the hand of a corrector.

in communibus hominum sensibus, 'in the feelings common to humanity.' So *de Or.* 1, § 12 and iii. § 195, of the instincts implanted by nature in all rational beings. Also of ordinary tact, *molestus communi sensu plane caret,* Hor. *Sat.* i. 3, 66.

in ipsa natura, 'in the order of Nature herself.'

qui ... adiungerer, 'inasmuch as I am retained.' The imperfect is due to the attraction of *viderem.* Note the recurrence of *hominum* (bis) and *homines* immediately below: cp. §§ 79, 85, 157. For *defendere pericula* cp. § 157.

Facile intellego, asyndeton adversativum = *Immo facile intellego.*

§ 18. conflatum et profectum, 'stirred up and set on foot.' *Conflare* here of working up, from the original meaning, 'to blow into flame': cp. § 79, *summam illi iudicio invidiam*

infamiamque esse conflatam: § 95, § 169. Many MSS. have *perfectum*: with *profectum* the prep. *a* = 'from,' not 'by.'

sic agitur ut, 'the case is such that,' 'the issues are so grave that,' etc. The reading in the text seems on the whole to be preferable to the alternative, *Sed ea vero sic agit ut.* The contractions used for *agit* and *agitur* are very similar in form, and the pronoun was inserted by a scribe who had mistaken the one for the other.

reticeri, impersonal as § 17, *de turpitudine parentis dici vix oportere.* Many codd. give *reticere*; but in the following passages also the question should probably be settled in favour of the passive form, as being more idiomatic: § 44, *removeri*; § 73, *pronuntiari*; § 122, *appellari* (where see note); ibid. *moveri*; § 133, *existimari*: cp. however § 36, *inire*; § 162, *debere.*

periculum here of peril or jeopardy resulting from an action-at-law. Cp. *hominum pericula* above; *si hominum periculis non defuissem*, § 51; also §§ 81, 117, 157. Similarly *salus* is often (*e.g.* § 3) used of deliverance from such peril, *i.e.* 'acquittal.'

illa accusatio. It has been proposed to excise *accusatio.* Perhaps rather insert (with Dr. Reid) *et* before *omnis testium copia.*

instituit accusatores, instruit testes, 'she organizes the prosecution and marshals the evidence.'

squalore huius et sordibus, 'the defendant's neglected person and shabby apparel.' Cluentius was *sordidatus*, *i.e.* he put on his worst clothes, as was customary at Rome, in the hope of moving the compassion of the bench: cp. *pro Mur.* §§ 42, 86.

temere ... appellari, lit. 'that she is being recklessly named,' or 'brought into the case,' *i.e.* that this is a random attack upon her. For this use of *appellare* cp. § 65, *Te, Oppianice, appello, te, T. Atti.*: § 148. Ramsay cites *de Off.* i. § 89, *ne ... alii plectantur alii ne appellentur quidem* (challenged). The word is frequent also with adverbs, and in the phrase *aliquem honoris causa appellare*, *i.e.* to make a complimentary reference to a person. For a different use of *appellare* ('to make overtures to'), see §§ 71, 194.

temere seems to be used with reference to its etymological meaning, 'in the dark,' 'blindly': cp. *perspexeritis, aperta*, in the immediate context. The stem reappears in our English 'dim' (A.-S. *thimm*); it is found also (with a somewhat unaccountable change from *m* to *n*) in *tenebrae* (*i.e.* *temebrae*, **temsrae*, medial '-sr-' in Latin always becoming '-br-,' as in *sobrinus* from **svesrinos*.

patiatur, subjunctive because of the 'subjective reference' involved, the charge being spoken of as it would present itself to the minds of the jurors.

VII. § **19**. **rationem accusationis** is generally explained as 'the motive of the prosecution,' *τὴν τοῦ ἀγῶνος προαίρεσιν*. But considering that *causa accusandi* occurs in the very next line, it seems preferable to interpret *ratio* here as the *method* of the prosecution rather than the *motive*. The accuser had to undertake a very wide indictment. Cp. quam *constanter* et quam *diligenter*, § 20, below.

id ipsum. It was sheer necessity (*vi ac necessitate*) that compelled Cluentius to prefer the charge, *to say nothing in the meantime* of his conduct of the prosecution—*quam constanter et quam diligenter, postea dicam.* See on *ipsum nomen*, § 12.

§ **20**. **paravisset**. The subjunctive is motived by the preceding *deprehendisset*. It will be seen later that the circumstances of the alleged attempt to poison Cluentius are not so indubitable as Cicero would here have us believe. See especially Introd. p. xviii.

non coniectura ... teneretur, 'did not depend upon surmise,' but was proved to demonstration: it was matter of 'plain and palpable' proof (*oculis ac manibus*). For *teneretur* cp. § 97, *quae res lege maiestatis tenebatur*: also the frequent use of *contineri* c. abl. *Coniectura* is from *conicio* (*συμβάλλειν*), 'to put two and two together': so § 97.

diligenter, of the scrupulous care which Cluentius bestowed on the indictment. It covered a great deal of ground, and all that Cicero promises in the meantime is a compendious statement (*summatim ... exponam*, § 19) of the *crimina* on which a conviction was secured.

capitis insidias, 'intrigues against his very existence.' *Vita* and *caput* are often conjoined in this way: *e.g. pro Caec.*, § 63, *Vim quae ad caput ac vitam pertineret*; *pro Mil.*, § 30. The technical application of the word 'civil existence,' *i.e.* one's rights as a citizen (see Ramsay's *Roman Antiquities*, pp. 84-5), is also of frequent occurrence, *e.g. capitis periculum*, § 25: cp. *capitis deminutio*, *capitis minor*.

vitaret is the common reading. S. and T. have *evitaret*, and this reading is adopted by Classen, Ramsay, and Faussett: tr. 'might escape at once and for ever.'

pauca, *i.e.* only a few out of many.

diffidentem rebus, 'mistrusting his prospects.' The opposite is *rebusque fidentes*, Hor. *C.* iii. 5, 59 (Faussett). Cp. Caes. *B. G.* ii. 24, *desperatis nostris rebus domum con-*

tenderunt: and *Liv.* v. 11, xxxvi. 31, *trepidi rerum suarum*—Nettleship.

§ **21. Larinas quaedam fuit,** 'there was a lady of Larinum.' For the order cp. *A. Cluentius Habitus fuit*, § 11; *C. et L. Fabricii fratres gemini fuerunt*, § 46.

Asculum Picenum (so called to distinguish it from the Apulian town of the same name), the political capital of the district, where the standard of revolt was first raised by the Italian tribes in B.C. 90. It was captured in the following year by Q. Pompeius Strabo, the father of Pompeius Magnus.

inter sicarios damnatus est, 'was found guilty under the statute of assassination,' 'was tried and condemned for murder.' Like the knife of the later Italian bandit, the *sica* was the favourite weapon of ruffians and assassins; hence *sicarius* came to be used generically for 'murderer' (Quint. x. 1, 12). *Inter sicarios* is a legal term, meaning 'on a trial for murder': cp. *quaestio inter sicarios*, § 147. For the *Lex Cornelia de Sicariis et Veneficis*, see Introd., p. xxix.

apud eum in ergastulo fuit, 'was in the slave prison on his estate.'

illum, deictic: τουτονί.

partiri. The absolute use of the word has its English analogy.

neque obscurus neque incertus, 'of a definite and trustworthy character.' The messenger was a known man, and one who could be trusted.

in agro Gallico. This was the name given to a strip of land lying along the Adriatic, between Ariminum and Ancona, north of Picenum. It was formerly occupied by the Senonian Gauls.

§ **22. tamen,** 'after all,' 'little though it was, yet,' etc. This elliptic use of *tamen* is frequent in Cicero: cp. also Virg. *Aen.* iv. 329, *qui te tamen ore referret.*

oppressa morbo est. In § 40 Cicero says that Dinaea was poisoned by Oppianicus, who also altered her will in favour of his son.

eis diebus paucis, 'a few days after that.' Similarly § 35, *decem illis mensibus*; § 108, *paucis diebus illis.*

VIII. § **23. ut erat ... singulari scelere et audacia,** 'being a person of unequalled wickedness and effrontery.' Cp. § 71, *ut erat semper praeposterus atque perversus.*

Gallicanum, of a dweller in the *Ager Gallicus.*

Larinum ad Aurios, 'to the Aurii at Larinum.'

investigandi rationem = 'investigation.' *Ratio* is often used periphrastically with a genitive: so *ratio delendi*, Quint. x. 3, 31, 'erasure' (*i.e.* the process of rubbing out); Tac. *Hist.* iv. 56, *ratio parcendi.*

A. Aurius. If this is the same person as the Aurius referred to in § 11 as having yielded to Sassia's blandishments, it is curious to note how Cicero varies his description of him. But *alterum Aurium* in § 25 probably is identical with the Aurius of § 11, and this is a different person. One MS. gives *M. Aurius.* On the other hand PST give simply *Aurius*, and so again § 26, 20 where ST omit the *A* before *Aurium*: the same letter has been supplied also (by Halm and by Mommsen) at § 25, 6 and 8: cp. § 188, 23. The explanation is probably that in the archetype the *A* was made to do double duty as possibly also the *m* in *ipsum M. Aurium*, § 23. 4 above: cp. on *P. Popilius*, § 95.

experiens, 'active,' 'enterprising,' lit. 'apt to try' conclusions. So *in Verr.* iv. 17, 37, *prompti hominis et experientis*; Liv. vi. 34, 4, *vir acer et experiens*; Hor. *Ep.* i. 17, 42, *pretium recte petit experiens vir.* For the noun cp. Lucr. v. 1452, *usus et impigrae simul experientia mentis.*

§ 24. denuntiarat, 'had given notice of his intention to prosecute.'

clamore ... ac minis, hendiadys, 'loud threatenings.' Cp. on *manibus et gremio*, § 13.

Q. Metelli. This was Q. Caecilius Metellus Pius (son of Numidicus), who had left Africa to join Sulla in Italy on his return from the East, B.C. 83.

§ 25. sceleris et conscientiae, 'his guilt and his guilty conscience.' For this use of *conscientia* cp. § 187, *timet mulier amens non suam conscientiam*; and such expressions as *magna vis est conscientia* (*pro Milone*, § 61; *Catil.* iii. § 27). The phrase *sceleris conscientia* is also, of course, quite common; cp. § 38, *recentis maleficii conscientia*; § 81, *conscientiam mei sceleris.* Many edd. have *et sceleris*, but the *et* seems to have little support from the MSS.

numquam se ... legibus. These words are omitted in ST, but it is obvious that they ought to stand in the text. *Anaphora* is a frequent source of error in MSS.; here the eye of the copyist must have run from one *numquam* to another, with the result that he wrote originally *numquam inermum inimicis*, which was afterwards improved (as in ST) into *numquam inermum se inimicis.*

per illam L. Sullae vim atque victoriam. The force of the preposition here seems to be 'taking advantage of,' 'under cover of,' rather than 'during the time of.' Cp. *quod per vim hostium aliquid esset actum, de Off.* iii. § 103; *per religionis vim, pro Dom.*, § 146; *per caedem et vulnera, pro Sest.*, § 91. So also § 108. *Vim atque victoriam* is an alliterative hendiadys for *violentam victoriam*: cp. *portum ac perfugium*, § 7.

in summo timore omnium, not quite correctly translated, 'to the utmost consternation of all the townsfolk,' but rather '*while* all the townsfolk were in a state of utter panic.' It was because of their panic-stricken condition that Oppianicus was able to effect so much.

quattuorviros. This 'Council of Four' constituted in *Municipia* a *collegium*, two of the magistrates being styled *quattuorviri iure dicundo* and two *quattuorviri aediles*. The government of *Coloniae* was administered by commissioners, *duoviri iure dicundo* and *duoviri aediles*: to the former the designation *quattuorviri* was also sometimes applied.

capitis periculum. For *caput* see on § 20 (*capitis insidias*), and for *periculum*, § 18. Tr., *qui sibi ... ostentarat*, 'who had threatened to impeach him on a capital charge.' So *iudicium capitis* = an action involving a man's right of citizenship: *poena capitis* = the penalty which deprived him of that right.

A. Aurium, illum qui. Editors here agree on what seems to be a wrong punctuation, *Aurium illum, qui*. The demonstrative should be taken closely with the relative: cp. § 26, *illam cuius virum*, etc.

alterum A. Aurium, see on § 23.

quo sequestre ... dicebatur esse usus, 'whom he was alleged to have employed as a depositary.' The indicative shows that this description of Vibius is due to Cicero, not to Oppianicus.—In the organized bribery that prevailed at Rome, the *sequester* was the 'intermediary' or 'go-between' (*sequor*) who 'held the stakes,' receiving the money from the briber to be paid to the bribed if he fulfilled his pledge. Cp. §§ 72, 87. The bargain was first made by the *interpres*, or bribery agent (§ 101): after the event the money was paid over by the *divisor* or paymaster.

non mediocri, litotes = 'the utmost terror.' The reading *tenebantur* is supported by the similar phrase *contineri metu.*

in causa iudicioque, 'on the occasion of his trial.'

potuisse arbitretur. So only one MS.; all others *potuisse arbitraretur*, which is inappropriate after the preceding *Quis est*, and may probably have resulted from the misinterpretation of a contraction. There is an exact parallel at § 96, 10, and also in *Mil.* § 78, *Quis igitur est ... qui arbitretur*, where all codd. give *arbitraretur.*

IX. **Atque.** I have ventured to suggest *Atqui* instead of *Atque*, as introducing a distinct stage in the development of the argument.

aliquando ... aliquam diu, 'at length,' 'for any length of time.'

§ **26. impudentior,** 'more brazen': **crudelior** 'more devoid of natural feeling.'

humanitatem constantiamque, 'fine feeling and resolute spirit.'

§ **27. non admiratur audaciam,** 'is not shocked at his effrontery.'

quod ... idcirco, *i.e.* the reason she gave for her refusal was that, etc.

domo = *οἰκόθεν*, he would have to 'draw upon his home resources,' *i.e.* he did not need to go outside for what he wanted. The expression is proverbial: Plaut. *Amph.* 637, Bacch. 648: *domo petes, ad Fam.* vii. 25. Cp. Phil. ii. § 26, *ab alienis potius consilium peterent quam a suis? et foris potius quam domo?—Domo* has been suspected by some critics, and is certainly a little awkward after *domum* (for which two Palatine MSS. give *dexteram*) in the preceding sentence. It is well known that *domo* and *modo* are frequently confounded in MSS: *hoc modo* is therefore an easy emendation. Orelli proposed *quoquo modo.* There is a similar interchange of consonants between *monitae* and *dominante* (for *domitae*?), § 67: cp. *molestia* ST in § 10, where other MSS. have *dolore.*

ad = adversus.

Teanum Apulum, so called to distinguish it from Teanum Sidicinum (Teano) in Campania, near the borders of Latium. It lay east of Larinum.

ludis aut festis diebus, ablative, as again at § 131. So Planc., § 27, *has orationes scripsi ludis et feriis*: also *comitiis, gladiatoribus,* etc.

cum simulasset, *i.e.* he gave out that he had to go, and no doubt he went, in order to divert suspicion.

hora undecima, *i.e.* about four or five o'clock afternoon,

in publico, opp. to *domi*. So *prodire in publicum*, *Verr.* **i.**, § 80; *carere publico*, *Milo*, § 18.

ante quam luceret, 'before the day had time to dawn.' The subjunctive shows that the connection is more than temporal.

§ **28**. **quisquam** occurs here, in conformity with the general usage, in what is really a negative sentence. Instances could, however, be cited, from Cicero as well as from Livy, where the implication of *quisquam* is positive, and not negative.

Dies nondum decem intercesserant, cum, etc. Similar inversions are common in English: the two actions are independent, the temporal clause being put first as an independent sentence, while what is logically the principal clause is subjoined with *cum*. Cp. § 72, *Unus et alter dies intercesserat, cum res parum certa videbatur*: § 83.

laetanti iam animo. Sassia has no longer any scruples, as at § 27 above; she is 'quite pleased.' The children are gone, and she will be happy with Oppianicus, and without them! For *optime* many MSS. give *optima*, but on the whole the former is to be preferred. Lambinus suggested *confirmata* for *confirmato*. Sassia's mind is now 'fully confirmed in her expectations'; she is quite confident in her prospect of married happiness. Classen thinks that what Sassia looked forward to was the 'amplior hereditas' that would accrue on the death of the children; but this seems far-fetched. It was rather Oppianicus who wanted her money: cp. *qui pecuniam Sassiae concupivisset* above, and *propter pecuniam* in what follows.

Ita quod ceteri. For the form of the sentence, cp. § 190, *Ita quod apud ceteros*, and (without *quod*) § 32, *Ceteri non videntur*. *Ceteri* = people in general, as § 13. Instead of *iucundum* some MSS. have *iucundius*, which would be, like *cupidiores*, an instance of the absolute comparative: cp. *alienior*, § 162; *occultiora*, § 194.

X. § **29**. **pro vestra humanitate.** Tr. 'You have human hearts, and I can see that you are greatly discomposed,' etc. Cp. *pro illo odio quod habuit*, § 151.

naturae ... satis fecit, he 'has paid the debt of nature.'

strictim, 'cursorily,' 'superficially': from *stringo*, of 'grazing the surface.' Other substantival adverbs of the same class are § 19, *summatim*; § 30, *acervatim*; § 64, *separatim*; § 118, *pedetemptim*; § 185, *nominatim*.

praesentis, 'as he stood before them.'

omnes oderant. The desire for antithesis leads the orator into statements which may seem to reflect on the impartiality of the tribunal. There was no impropriety in telling his hearers that Oppianicus was now beyond the reach of their detestation (*quem odisse iam non potestis*); but it is a more serious matter to say that at the trial of Oppianicus his judges had already made up their minds against him. The insertion of *omnes* before *oderant, ducebant* introduces, however, a more general reference: Oppianicus was the object of *universal* detestation, and the *unanimous* opinion about him was, etc.

omni supplicio, 'the severest punishment.' For *omni* = *summo*, cp. *de Amic.* § 43, *omni supplicio vindicanda*; *pro Sest.* § 28, *omni supplicio esset dignus*; *de Imp. Cn. Pomp.* § 11, *omni supplicio excruciatum necavit.*

a P. Cannutio: § 50. In the *Brutus*, § 205, Cannutius is referred to as *aequalis meus, homo extra nostrum ordinem meo iudicio disertissimus.* Cp. *Tac. Dial.* 21.

diu = multis verbis, 'in a long speech,' 'at great length,' as again § 147. Cp. *pro Rosc. Amer.* § 89, *quam diu diceres!* See also my notes on *Tac. Dial.*, 6, 27 : 11, 3 : 25, 2.

diceretur. Contrasted with the indicative in the preceding sentence (*auditis cum ... dicuntur*), *diceretur* would seem to indicate something more than mere coincidence in time: the jurors were under the influence of the long and telling speech (*graviter et diu*) delivered by Cannutius. Mr. Lendrum says the difference is the same as between *Fuit tempus cum Germanos Galli superarent* (Caes. *B. G.* vi. 24) and *Fuit cum hoc dici poterat* (Liv. vii. 32).

§ 30. Et est quisquam. Indignant question: for the use of *et*, cp. εἶτα in such phrases as εἶτ' οὐκ αἰσχύνεσθε;

Acervatim, lit. 'in the gross' (*acervus*), opposed to *singillatim*, 'in detail.' See on *strictim*, § 29.

causae, dative after *propiora*: **huiusce** = τουτουΐ. So *huiusce periculi*, § 117.

vos quaeso memoria teneatis. In this phrase *vos* is nominative, and stands first for emphasis: *teneatis* is jussive subjunctive in semi-dependence on *quaeso*. Cp. *tu consideres censeo diligenter*, § 135. In § 8 *quaeso* governs *audiatis* directly: cp. § 11, and see note on § 66.

hoc uti initio. It is impossible to believe that this depends on *memoria teneatis.* Rather by an easy transition the orator passes from the constr. *non mihi hoc esse proposi-*

tum ut to the simple infinitive *sed* ... [*mihi propositum esse*] *hoc uti initio*, etc. The recurrence of *hoc* four times in the sentence is remarkable.

emori, here, as § 42, 'to perish miserably.'

ad hanc mortem repentinam, generally rendered, 'in addition to this sudden death,' the *indicia et vestigia veneni* being cited as further evidence. Cp. in *Vatin.*, § 20, *si ad cetera vulnera ... hanc quoque mortiferam plagam inflixisses*, where *quoque* corresponds to *praeterea* in the text. Dr. Reid, however, would render 'on the occurrence of': cp. Roby, § 1824, and Liv. ix. 7, 7, *ad famam obsidionis dilectus haberi coeptus erat*, 'following on the report.'

XI. § **31**. **Eodemque veneno**, 'by poison likewise.

in ipso fraterno parricidio, 'in the murder of a brother *taken by itself*,' *i.e.* without going outside it, you have every form of bloodguiltiness. *Parricidium* used to be explained as a contracted form of *patri-cidium* or *parenti-cidium*, an extended signification having been given to the word when it came to be applied to wilful murder of any kind. Modern philologists prefer to connect the first part of the word with **parrus*, 'open,' **parsus*, 'companion,' one who 'offers himself' (*pareo*, *appareo*, *parra*, sc. *avis*).

aditum ... **munivit**. Cp. the common phrase, *munire viam*, used both literally and figuratively.

ut ... **necaretur** indicates purpose: his object was to get rid of the child that stood between him and his brother's estate.

illo poculo mortis, 'that deathful draught.' *Illo* is emphatic: the cup was mixed with the drug which Oppianicus knew so well how to use. Cp. *Eodemque veneno* above. *Mortis* is said by editors to be unusual for *mortifero*: but cp. *mortis insidiis*, § 201.

cum de ... **clamaret**, 'when he was calling out upon.'

liberos, 'offspring'—an example of the use of the plural for rhetorical effect (§§ 125, 200). Cp. the indefinite neuter above, *illud quod erat ex fratre conceptum*, and again § 33 *ad fin.*

hanc a natura lucem accipere, 'take in the kindly light of day.' Many MSS. and edd. have *propriam lucem*, which commentators do not endeavour to account for. If *propriam* did not make its way into the text quite gratuitously, from *prius* in the line above, I incline to think that it may have resulted from the misreading of an adscript *propitiam*, 'kindly light.' *Hanc a natura lucem*, without any adjective, is quite in Cicero's style: Tusc. i. § 12, *omnes ... qui hac luce careant*,

ib. ii. § 10, *fore aliquando finem huius lucis*: *Cat.* i. § 15: *Sex. Rosc.* § 150.

nihil ei clausum nihil sanctum. This is the reading which seems, on the whole, to be best supported by evidence and probability. Some edd. bracket *clausum nihil*, following the first hand in S.; others retain the words and repeat *ei* before *sanctum*. The confusion arises from the same cause as has been noted on § 25, *numquam se iudiciis*.

custodiae. This unusual plural is found in ST. So often φυλακαί for φυλακή.

§ 32. cum essem in Asia. This was on the occasion of Cicero's temporary retirement from the bar (B.C. 79) with the view of recruiting his health. See *Brutus*, § 313, and Strachan-Davidson's *Cicero*, p. 20.

heredibus [secundis], 'heirs in default,' to whom the property would revert in case of failure of issue. Cp. Hor. *Sat.* ii. 5, 48. *Secundis* is not found in ST, and it is difficult to decide whether it really belongs to the text, cp. *ludis* [*publicis*], § 27: Classen and Ramsay accept it, while it is rejected by Baiter, Müller, and Faussett. The word occurs in Quint. viii. 4, 11, but not as an actual quotation from this passage.

partum ... abegisset, 'had drugged herself to procure abortion.'

rei capitalis, lit. 'on a charge involving her *caput*' (§ 20). For the genitive of the charge cp. § 97.

heredem familiae, 'the heir of a house.' To a Roman mind this would present itself as a very special enormity: the formalities by which the practice of adoption was regulated attest the importance attached to having some one to take the succession and carry on the family *sacra*.

in eadem iniuria, lit. 'in the case of the same crime.' For this use of *in* cp. *in eius modi iniuriis*, § 13, *in tantis iniuriis*, § 14, where see notes.

si quidem, 'inasmuch as,' giving the basis for a conclusion already stated. This use, common in later Latin (see on Quint. x. 7, 2) is frequently found in Cicero, and it should be noted that *si quidem* always follows what is practically an apodosis: *Brut.* § 39, *pro Mur.* § 24, *de Amicit.* § 89. It is probable that the instance in *Phil.* ii. § 31, considered doubtful by some editors, is to be explained in the same way.

mortem atque cruciatum. This phrase is common enough for a 'death of agony,' *e.g. Verr.* v. § 138, *mortem cruciatumque*. The phrase, 'corporis mors' has been suspected, but as a critic in the New York *Nation* (26th Dec.

1896) points out, "we must have *alieni corporis* for the contrast with *suo corpori* which has just been used in the foregoing clause. As for Quintilian's *vim atque mortem* (in his quotation of this very place—viii. 4, 11), his memory (?) may have played him a trick due to the occurrence of *vim attulisset* just above." Cp. also the striking phrase, *mortem eius lacerari*, *Mil.* § 86, 'to be mangled in death.'

in singulis hominibus, 'on individuals,' *i.e.* successively. Tr. "Most assassins seem incapable of undertaking a series of murders on individual victims": they are unequal, as a rule, to the murder of several victims successively. For the form of the antithesis *Ceteri ... Oppianicus*, cp. § 28.

XII. § **33**. **consuetudinem audaciamque**, hendiadys, 'habitual effrontery.' Cp. *vim atque victoriam*, § 25, *clamore ac minis*, § 24: see also on *manibus et gremio*, § 13.

illius, deictic, 'young Oppianicus there.' He was the son of Magia, the daughter of Dinaea, and sister of Cn. Magius, § 21. Below, *illum sororis suae filium* has the force of 'the said nephew.'

faceret, imperfect of intended action.

adhibitis amicis. He held, in fact, a family council (*consilium*) as was customary when any important decision was being taken, cp. § 176, *Advocantur amici*; §§ 182, 184, *de amicorum sententia.* Similarly the king, in ancient times, took the advice of the senate, the general that of his officers, and the magistrate that of his assessors—the advisory body constituting in each case the *consilium.*

tum, *i.e.* during her husband's lifetime. Similarly the pluperfect in § 41, *qui gener eius fuisset.* The ties of *adfinitas* were dissolved when a marriage connection was interrupted by death or divorce: § 190, *divortia atque adfinitatum discidia* Cp. *de Or.* i. § 24.

id quod conceperat. The indicative is retained in *oratio obliqua* when the phrase used is a circumlocution employed as the equivalent of a noun: *e.g.* *in Cat.* iii. § 21, *Hic quis potest esse ... qui neget haec omnia quae videmus* ('this whole visible world') ... *deorum immortalium nutu ac potestate administrari?*

grandem pecuniam, 'a large sum of money.' So *certa pecunia*, 'a specified sum,' *pro Q. Roscio*, § 15: *permagnam pecuniam*, *Verr.* i. § 138.

a filio. "According to the Roman law in the time of Cicero, no legacy (*legatum*) could be bequeathed except *through* the 'Heres' named in the will, who acted as sole

executor, and was bound to pay it. Hence a testator was said to bequeath a legacy (*legare*) AB HEREDE."—Ramsay.

si qui natus esset. This is the reading of most MSS., and it seems natural: S. and T., however, give *erit*, and again in § 34—a vivid presentation of what may have been the actual wording of the will.

ab secundo herede. See on § 32. Cp. the phrase *solvere ab aliquo*: *ad Att.* vii. 18, 4, *Quintus frater laborat ut tibi quod debet ab Egnatio solvat*, where Tyrrell and Purser render, 'Quintus is anxious to give you an order on Egnatius for the money he owes you.' For *ab* with the ablative of the 'source from which,' see Roby, 1810.

§ 34. Quid ... suspicatus sit refers to the precautions described above as having been taken to prevent foul play: *quid iudicarit* ('his estimate of the man') must be read with what follows.

cuius = cum eius, a reading which is, in fact, found in many MSS. *Cuius* corresponds better with *eum* in the apodosis. Tr. 'Though he was making the son his heir,' etc.

liberis, 'his offspring,' as in § 31.

illum Magium, 'poor Magius.'

non longe animo prospexisse. This passage has been much debated. Baiter, Ramsay and Müller follow most MSS. in omitting the *non*, which is, however, found in ST (and so Classen, Kayser, Faussett). Without *non* the obvious explanation is, 'Magius saw far into the future on his death-bed.' His suspicions were, in fact, well founded: cp. *quid ... suspicatus sit* above. Inserting *non*, commentators take Cicero to mean 'the range of Magius's mental vision did not, after all, reach far into the future.' He had foreseen what was likely to happen, but had not guarded against it sufficiently: "his utmost foresight was short-sighted in the face of such enterprising villainy."—Faussett.

A closer consideration of the text has suggested to me that *non* ought to be retained, though with a different explanation. The key to the meaning seems to lie in *praesentem* below. Magius had foreseen, with all the prescience of a dying man (*morientem*), what was to happen after his decease, and it was no distant vista! (*non longe.*) Oppianicus took action at once on the lines Magius had feared: *praesentem pecuniam mulieri solvit.*

For the phrase cp. *de Amic.* § 40, *Etenim eo loco, Fanni et Scaevola, locati sumus ut nos longe prospicere oporteat futuros casus rei publicae*: and *de Rep.* ii. § 12, *consilium hominis iam tum longe providentis secutus est.*

praesentem, 'money down,' as we say, or 'in ready money.' Plaut. *Capt.* ii. 2, 8, *Quos tam grandi sim mercatus praesenti pecunia.* So *praesentarium argentum*, Most. ii. 1, 14. Cp. also the use of *repraesentare*, to pay 'cash down.'

haec. The demonstrative pronoun is usually attracted into the gender of the predicate: *Fin.* ii. 22, 70, *At negat Epicurus* (*hoc enim vestrum lumen est*). Cp. *vis illa fuit*, § 96: *iam ista divinatio est*, § 97: *hoc enim vinculum est*, § 146: *mortem ... quod erat ... perfugium*, § 171.

tum, on the occasion of his trial.

sceleri Oppianici, 'to that scoundrel of an Oppianicus. *Scelus* was used colloquially as a term of reproach, and occurs frequently in the comic poets. Plautus also has *scelus viri*, 'you scoundrel of a fellow,' *scelus pueri*, *flagitium hominis*, *etc.* For a similar colloquialism in Cicero, cp. *Fam.* v. 8, 2, *quaedam pestes hominum*: *in Pis.*, § 56, *o scelus, o pestis, o labes!* Cp. also § 188, *Quod tam infestum scelus et immane, aut unde natum esse dicamus?*

§ 35. obtestatione, ablative of external cause. This construction is not very common in early and classical Latin, except in certain formulae. Faussett compares Phil. i. § 30, *se beneficio novo memoriam veteris doloris abiecisse*, and Catullus, xiv. 3, *Munere isto odissem te odio Vatiniano.* Cp. also *Leg.* iii. 7, 15, *regale genus non tam regni quam regis vitiis repudiatum est.*

decem illis mensibus, 'for the next ten months.' Cp. *eis diebus paucis*, § 22. Ten lunar months were accounted the regular period of gestation (Ov. *Fast.* i. 33).

sceleris societate coniunctae, *i.e.* the bond of union was companionship in crime. For the abl. see note on § 12, *scelere coniuncta.* So *Iungimus hospitio dextras*, *Aen.* 3, 83; *Quam petitis iuncta est mihi foedere dextra*, 8, 169.

XIII. **§ 36. Larino**, ablative of origin. Cp. Plaut. *Asin.* 499, *Rhodo mercator*; *Merc.* 929, *video ibi hospitem Zacyntho*; Caesar, *B. C.* 1, 24, *N. Magius Cremona.* So regularly with names of tribes: Cic. *Verr.* i. § 23, *Q. Verres Romilia.*

admota, 'brought to bear,' viz. on Asuvius.

inire: so Baiter, Kayser, Ramsay, Müller. There can be little doubt that this reading should be preferred to *iniri* (Classen, Faussett): the form of the sentence makes it probable that two similar infinitives were to stand at the beginning of each clause. The examples of a change of construction from passive to active, quoted by commentators, do not seem to be in point.

posse arbitrati sunt. In the case of *verba sentiendi et declarandi*, when the subject of the infinitive is the same as the subject of the principal verb, it may be omitted, especially if a personal or reflexive pronoun. This usage occurs most frequently with the fut. infin., to which *posse* here is practically equivalent. Cp. §§ 100, 176.

hos vestigiis ... consecutus est, 'followed closely in their track.' *Vestigiis* is a local abl., like *porta ingressus, recta* (sc. *via*) *venire*, etc. Cp. *Brut.* § 90, *Q. Hortensium ipsius vestigiis persecuti*; Liv. ix. 45, 16, *pergunt hostem vestigiis sequi. Consequi* does not necessarily mean to 'overtake.'

longum est, 'it would be a long business': cp. § 107, and *ne longum sit*, § 198. In such expressions Latin prefers the indicative to express as positive facts such abstract relations as possibility, power, duty, convenience, and the like. The English equivalent, on the other hand, implies *non-realization*, as here, *it would be tedious* (I will not do it). *Nat. Deor.* ii. § 159; Quint. x. 1, 118.

exitum, *i.e.* 'how it all ended.'

§ 37. mulierculam, 'mistress,' contemptuous diminutive.

obsignatores...adducit, 'brings witnesses to seal it.' "A man had his choice between two forms of making his will—the civil form by *mancipatio*, and the praetorian, with seven seals and seven witnesses, and without *mancipatio*" (*Dict. Antiq. s.v.* TESTAMENTUM). In the presence of the witnesses the testator put his name to the document, and then they subscribed their names and affixed their seals. This, at least, was the usual form. In sealing, the witnesses would use an *anulus*, or something that would make a mark on the wax tablets (cp. *gemma uda, Juv.* i. 68), and in adding their names (*adscribere*), they would say whose will it was they sealed (cp. *Asuvi nomine* below). This was all done on the outside of the tablets. "When sealed, it was deposited with some friend, or in a temple, or with the Vestal Virgins; and after the testator's death it was opened (*resignare*) in due form" (*Dict. Antiq.* l.c.). Cp. Roby in *Classical Review*, i., p. 69.

nossent, subjunctive after *qui* = *tales qui*. This was their 'qualification.'

brevi illo tempore, 'a short time after that': cp. § 22, *eis diebus paucis*, § 108.

hortulos, 'pleasure gardens,' or 'parks': as, for example, the grounds of a country house. Cp. *horti, Mil.* § 74.

harenarias, 'sand-pits.' For the use of the adjective as a substantive, cp. Cato, *Orig.* vii. fig. 5 (p. 28, 6), *sunt in*

his regionibus ferrareae argentifodinae pulcherrimae: so *aerariae*, Caes. *B. G.* iii. 21: cp. also such phrases as *bellicum* (sc. *signum*) *canere*. Ramsay remarks that the existence of the catacombs is due to the practice of excavating for the volcanic sand now called *pozzolana* (*pulvis Puteolanus*), which was extensively used for building purposes.

§ 38. **unum et alterum diem**, 'for a day or two,' or more definitely, 'one day and then another.' So §§ 72, 77. See my note on Tac. *Dial.* 21, 6.

desideraretur, tr. by pluperfect on the analogy of *Iam dudum tibi adversabar* (Plaut. *Men.* 420) ('I had long been opposing you'). The action is continuous; Asuvius had been 'missed' for two whole days before his freedmen and friends took action in the matter.

ubi ex consuetudine quaerebatur, 'where his habits led people to look for him.'

suos amicos, 'some friends of his.'

triumvir, one of the three commissioners of police. Manlius was one of the *III viri capitales*, who, besides keeping the peace of the streets, in association with the aediles, also assisted the praetors in the exercise of their judicial functions, especially in the way of making a preliminary investigation of alleged offences. They were responsible also for the carrying out of 'capital' sentences.

Atque ille. For *ille* (as against *illic*) cp. § 75 *ad fin.*

nullo teste, 'without any one to give evidence against him.' For this use of *nullus*, cp. on *nullis auspicibus, nullis auctoribus*, § 14. So 'nullo ordine,' 'nullo equitatu' (Roby, § 1234).

§ 39. **coram**, 'face to face.' Tr. 'Avillius is made to confront him.'

plerique, 'most of you': so § 117, *sicuti plerique vestrum sciunt.* In later Latin (especially Quintilian and Tacitus) *plerique* often means little more than *multi*, but for Cicero the normal usage is fixed by such passages as *Planc.* § 53, *cum tribus plerasque ... tulerit*: *ib.* §§ 58, 84.

honorem, 'distinction': he did not care whether he were considered 'reputable' or 'disreputable.' Cp. *quid honos meus postulet, pro Sest.* § 119.

non ullum. The negative is resolved in order to keep up the *anaphora*: tr. 'he never had bestowed a thought upon,' etc. Similarly *Rosc. Am.* § 128, *non enim laborat de pecunia, non ullius rationem sui commodi ducit, i.e.* 'he does not take his own interests into account at all.'

ex petulanti atque improbo scurra, 'from being a wanton and reprobate hanger-on.' *Scurra,* a 'man about town': a professional diner-out (Hor. *Sat.* 1, 5, 52).

in discordiis civitatis, *i.e.* the civil war between Marius and Sulla.

columnam, the Columna Maenia in the Forum, near the common prison. At this tribunal the Triumviri Capitales (of whom Manlius was one, § 38) sat in judgment on runaway slaves and the lowest class of criminals.

multorum conviciis, 'amid the revilings of a mob'; abl. of attendant circumstance.

Itaque rem cum Oppianico. This is the simplest reading: ST have *tum* instead of *rem.* For the absolute use of *transigere,* cp. § 40, on the strength of which Baiter suggested that we should read *Itaque cum Oppianico transigit.* The occurrence of *tum* three times in four lines would be against *Itaque tum*: above, we might perhaps read *tandem suffragiis.*

tam manifestam. Most edd. have bracketed *tam,* as probably due to the homoeoteleuton. I prefer to retain it both here and at § 30, 7.

crimen hoc Asuvianum, 'this charge in the matter of Asuvius.' Cp. the common phrase *probare crimen,* 'to make good a charge.' Similarly § 47, *quo facilius ... comprehenderetur res eius indicio.*

cum ... tum vero, 'not only ... but also': καὶ ... καὶ δὴ καὶ (*Sest.* § 25). Cp. §§ 159 and 138 (note).

in quo, *sc.* **indicio.** As analogy would lead us to expect *indicio adligari* rather than *in indicio adligari,* it seems best to connect *in quo* with *constabat* ('by which it was made clear': cp. *in quo constitit Naevium ex edicto non possedisse, pro Quint.* § 89), and to take *adligatum* absolutely, as = 'implicated,' *i.e.* in the charge. Tr. 'the sworn information of Avillius established the fact that the person primarily implicated was Oppianicus.' The variant *in quo inter alligatos* is explained to mean 'among those implicated in the affair.' Cp. the use of *alligati* in *Q. Fr.* ii. 3, 5, which is, however, a suspected passage. *Allegatos* (= *nocentes*) is to be rejected.

XIV. **§ 40. se nullo modo curari velle,** 'that she altogether declines to be attended by one whose attentions had lost her all her children.' A comparison of the facts stated in §§ 21, 22 will show that the insinuation is not to be pressed. All that is alleged against Oppianicus in this connection up to the date of Dinaea's death, is the fact that Cn. Magius regarded him with suspicion at the time when he was making his will. In regard to Dinaea herself, Cicero may have

meant in § 22 to hint at the villainy which he now proceeds to detail: the words *eius modi ut* (cp. § 135) seem to imply that her will was an unnatural one, and must have been procured by foul play of some kind.

cum eo ... transigit, 'settles with him' for, etc.: *in Verr.* ii. § 79, *qui cum reo transigat.* The amount would be about £17 in English money.

fora, 'market-towns,' 'fairs': *Verr.* iv. § 76, *circum omnia provinciae fora rapiebat* (of towns in which an assize was held). Dr. J. S. Reid refers me to the following inscription (in Buecheler's *Carmina Epigraphica*) to illustrate the trade of vagabond doctors like Clodius:—

Ortus ab Iguuio medicus fora multa secutus
Arte feror nota, nobiliore fide.
Me consurgentem valida Fortuna iuventa
Destituit rapidis imposuitque rogis.
Clusinus cineres flammae cessere sepulchro,
Patronus patrio condidit ossa solo.

§ 41. qui gener eius fuisset, 'as having been her son-in-law.' Cp. note on *tum*, § 33.

signis adulterinis obsignavit, 'sealed it with forged seals.' See on § 37.

haec ipsa, 'even what I have said': lit. 'these things, taken by themselves.'

tabulas ... censorias, *i.e.* the official register of the censors at Larinum.

decuriones, 'the Town Council,' § 197. **universi**: it was a unanimous finding.

rationem ... rem, 'pecuniary transactions ... any dealings whatever.' Cp. *de Off.* i. § 53, *multisque cum multis res rationesque contractae.*

cognatis, 'kinsmen,' 'blood relations': **adfinibus**, 'connections.'

tutorem. Cp. § 34, *eum tutorem liberis non adscripsit.*

aditu, 'to visit'; **congressione**, 'to meet'; **sermone**, 'to converse with' (προσφωνεῖν, Soph. *O. T.* 238); **convivio**, 'to invite to table.' Cp. *pro Sest.*, § 111: *Te nemo tuorum videre vult, omnes aditum, sermonem, congressum tuum fugiunt; te sororis filius Postumius ... notavit cum in magno numero tutorem liberis non instituit.* Similar language is used of Oppianicus, § 170, *ad fin.*

abhorrebant, *sc. ab eo*, 'shrank from him

immanem. This word is constantly conjoined, in Cicero, with *bestia*, *fera*, or the like. Tr. 'savage,' 'brutish,' 'bestial.' Etymologically it = 'unmanageable,' *manus* being an old word for 'good' (εὐχερής: 'tractable'): from the root MA, to measure.

§ 42. **Erat huic inimicus Oppianicus, erat.** Some editors have proposed to omit the second *erat* not recognizing that we have here an instance of *Epanalepsis*: cp. § 96, *Non fuit illud igitur iudicium iudicii simile, iudices, non fuit.*

nihil for *nullus*, as often in Cicero: *e.g. ita tibi persuadeas mihi te carius nihil fuisse* (*ad Fam.* xiv. 3, 5).

voluntate, 'sympathies.'

ratione vitae, 'manner of life,' cp. § 46.

iuste pieque, 'in a rightful cause and with a clear conscience.' *Iuste*, for Cluentio had been wronged: *pie*, for the relationship between father-in-law and son-in-law did not debar the latter from the right of self-defence.

acerbe, 'before his time.' Cp. *acerba mors*, of a premature death.

quoquo modo posset, 'as best he could,' *i.e.* in spite of his personal disinclination.

emori, lit. to 'die right off,' to be 'wiped out,' cp. § 30.

§ 43. **utrumque, et huic ... et illi ... necesse fuisse.** The traditional punctuation, which inserts the comma after *condemnari* instead of after *fuisse*, distorts the Latin. The constr. is not *intellegetis utrumque necesse fuisse, et huic accusare et illi condemnari*: the datives *huic* and *illi* are governed by *necesse*, and the whole clause is in apposition to *utrumque*. Many MSS. have *illum* for *illi*, but the dative is preferable.

XV. **Martiales quidam Larini appellabantur.** 'There were at Larinum certain officials called Martiales.' Cp. *Larinas quaedam fuit Dinaea*, § 21: *C. et L. Fabricii fratres gemini fuerunt*, § 46. In such narratives the name is generally placed first.

religionibus, 'religious ordinances.'

Venerei, 'servants of Venus.' Venus was worshipped in her temple on Mt. Eryx, on the north-west coast of Sicily: cp. *Erycina ridens*, Hor. *Od.* i. 2, 33.

familia, *i.e.* members of his household establishment: cp. § 161.

defendere, to 'maintain,' 'set up a plea.

decuriones, see on § 41.

publice, on behalf of the corporation of Larinum : § 196.

pro loco, 'in consideration of his position.'

pro eo quod, 'in consideration of the fact that.' Livy, xxxviii. 49, *pro eo quod ... vos ... fatigavi, veniam ... velim.*

non suis ... commodis, sed etiam, etc. This frequent antithesis (cp. *de Off.* i. § 22; *de Fin.* ii. § 45; *Mur.* § 83) was rhetorically expanded by Lucan when he said (of Cato), *Nec sibi, sed toti genitum se credere mundo, Phars.* ii. 383.

tantae, 'so urgent' an expression of their unanimous wish.

§ 44. utriusque studio defensionis, 'the eagerness with which the rival disputants tried to make good their case.' *Utriusque*, subjective genitive = Oppianicus on the one hand and Cluentius on the other. *Defensionis* (obj. gen.) is used in a sense parallel to that in which *defendere* occurs in the preceding section.

infesta atque inimica, a strong expression, intended to indicate relentless, unconcealed enmity.

sua interesse, *i.e.* they said they could not win unless their energetic opponent were removed.

avarissimi atque audacissimi. This is the reading of most MSS., but many editors have followed the first hand in S. in bracketing or omitting *atque audacissimi.* Mr. Faussett regards these words as an obvious interpolation, which weakens the force of *avarissimi* in the context. On another view they appear to be quite in place : Oppianicus not only was avaricious but would take any means to gratify his avarice. The use of *audacissimi* therefore seems to anticipate *quae ... necaretur* and *qua ratione Habitum veneno tollere conatus sit* immediately below.

§ 45. bona eius omnia ad matrem esse ventura. We must infer from this that Cluentius's sister (§ 11) had died, or else had married with *conventio in manum*, and so had ceased to belong to the Cluentian family. Otherwise she would have inherited as one of the 'next-of-kin' (*consanguinei*) if her brother had died intestate. As to Sassia, she too would have taken as next-of-kin, for the law prescribed that a woman marrying with *conventio in manum* should rank as a daughter, and, therefore, she would have been in effect a sister of the supposed intestate for purposes of inheritance. But in the meantime she had contracted two additional marriages, and this must have barred her claim to *hereditas* or full succession. All she could rank for would be what is defined in § 165 as *bonorum possessio ex edicto praetoris, i.e.* the use and enjoyment

of the estate as opposed to full ownership, and this is probably the meaning here.

aucta ... **orbata**, nominatives.

quae ... **postea** ... **necaretur** must mean 'who could afterwards be put to death.' Oppianicus is to be conceived as saying *quae a me postea necabitur.* Dr. Reid supplies me with an apt parallel: *de Off.* iii. § 49, *huic ille* (sc. *dixit*) *classem Lacedaemoniorum, quae subducta esset ad Gytheum, clam incendi posse, quo facto frangi Lacedaemoniorum opus necesse esset.*

XVI. § 46. **Aletrium** (Alatri), a town in the territory of the Hernici, about 50 miles E. of Rome. Mr. Faussett, following Halm, prefers the form *Alatrium.*

splendor, 'distinction,' 'shining merit.' So § 198, *honesti homines et summo splendore praediti*, lit. 'honourable gentlemen, of the most unsullied reputation.' So § 153, with *dignitas*, as frequently elsewhere: *e.g. Verr.* i. §§ 18, 49. Cp. also *pro Planc.* § 30, *Hunc tu vitae splendorem maculis adspergis istis? Phil.* iii. § 15, *Aricium ... splendore municipum honestissimum*; *Rep.* ii. § 69, *ut sese splendore animi et vitae suae sicut speculum praebeat civibus*; Liv. iii. 35, 9, *nequaquam splendore vitae pares.*

quam prope aequabilis, lit. 'how uniform, as a rule.' These words would seem to go best with *splendor*: if we were shut out to taking them with *ratio vitae*, I should be inclined to consider them (with Dr. Reid) as a gloss on *quam fere omnium.* [Or is *prope* limited to *aequabilis*, to tone down an unusual expression: 'how even, if I may so express myself'?]

constans et moderata, 'consistent and orderly.'

ut mea fert opinio, 'I fancy.' Like *opinor, ut opinor*, this phrase introduces a statement on which Cicero does not wish to insist. For *fert* in the sense of 'bears' or 'tends,' cp. on *ut aetas illa fert*, § 168.

Iam hoc, etc. As in §§ 57, 67, 109, *iam* is used to put forward a new presentation of the speaker's argument: here it leads up to *Cum illi ita viverent ... studiose*, etc.

fere scitis, 'you are aware, I take it.'

studiorum ac naturae similitudo, 'similarity of tastes and disposition.' Lael., § 15, *id in quo omnis vis est amicitiae, voluntatum, studiorum, sententiarum summa consensio.*

circumscriptiones adulescentium. *Circumscriptio* was the technical term for fraudulently over-reaching a minor:

Juv. x. 222, *quot circumscripserit Hirrus pupillos*; *id.* xiv. 237, xv. 135. This offence was dealt with by the *Lex Plaetoria*, passed probably in the early part of the second century B.C.: "it introduced the distinction, previously unknown, between *minores* (under 25 years of age) and *maiores*, and protected the former against all kinds of fraud by enacting that contracts with minors were legally binding only in case of their being made in the presence of a *curator* appointed by the *praetor*" (Sonnenschein, on *Rudens*, 1381); *de Off.* iii. § 61; *de Nat. Deor.* iii. § 74.

§ 47. sic statuit ... comparare. This use of *sic* with *statuere*, to anticipate an infinitive clause, is more common in Cicero with the meaning 'to take up this position, viz.' Compare Sest. § 24, *statuebam sic ... boni nihil exspectandum*: *Verr.* ii. 2, 9, *hoc statuerunt ... istius iniurias per vos ulcisci.* So again, § 51, *ita constitui, fortiter esse agendum.*

medico non ignobili, spectato homine, 'of no mean standing, and personally a man of repute.' Müller bracketed the [*sed*] which appears in ST before *spectato*, and Dr. Reid approves, remarking that 'explanatory clauses with some case of *vir* or *homo* in apposition to a word in a preceding clause generally stand without a conjunction.' *Sed* may have originally been written by some copyist who had omitted *non* before *ignobili*, as in many MSS.

Cleophanto. The doctor was a Greek.

spe et pretio, 'promises and bribes.' Cp. *pretio, gratia, spe promissis induxit aliquem* (*Rosc.* § 76) and (*ib.* § 79) *qua spe aut quo pretio*; *pretium* alone, §§ 47, 194.

non incallidus. The slave was 'no fool': cp. *minime mendax*, § 175. The words are by no means intended as an expression of reproach, as Ramsay thinks: his defence of *sed* for *et* in what follows is therefore without foundation.

frugi, dat. of *frux*, used as an indeclinable adj.: tr. 'honest.' In its origin it seems to have indicated 'respectability' as the result of thrift: Hor. *Sat.* i. 3, 49, *Parcius hic vivit: frugi dicatur.* In old Latin *frugi* was a noun: Plaut. *Ps.* 468, *Cupis me esse nequam: tamen ero frugi bonae.*

integer, 'upright,' 'incorruptible': so §§ 49, 124, and *integritas*, § 133.

communicavit, 'conferred with' Baebius, told him the circumstances. The absolute use of this verb is not very common: *de Or.* i. §§ 66, 250. *pro domo*, § 132; *Vatin*, § 3; *Phil.* xi. § 23. Nägelsbach[8], § 116 (p. 457).

qui qua fide ... fuerit = *et qua fide is fuerit.* The occurrence of the *qui* clause dependent on *meminisse vos arbitror* has occasioned some difficulty; but cp. § 30, *Qui uxori suae ... cum ipse poculum dedisset, subito illa ... exclamavit* with § 31, *Qui sero ... cum ... cuperet ... est mortuus.*

comprehenderetur res, 'the charge might be brought home.' Cp. *re deprehensa* (§ 48) and also (§ 39) *crimen ... indicio Avilli comprobabatur.*

comparatur, *i.e.* by Diogenes. It is clear from § 53 (*constitutum ... ut medicamentum, non venenum Diogenes adferret*) that it was Diogenes who brought the poison to the rendezvous.

cum ... ex occulto intervenissent. The *viri boni* had been privately stationed where they could witness the interview, and they now emerge from their concealment.

pecunia obsignata, quae ob eam rem dabatur, 'a sealed packet containing the money consideration that was being offered for the deed.' For an examination of this Scamander incident, which has been the subject of much unnecessary difficulty, see Introd., p. xvi. *sqq.*

XVII. **§ 48. apertior,** 'more evidently guilty.' It was a 'clear case.'

quae a quoquam excogitata defensio, 'what defence, no matter by whom elaborated.' Cicero had himself defended Scamander when the latter was brought to trial (§ 53), and he wishes his hearers to understand that even his ability had been unequal to the task.

huic uni crimini. It should be noted that Cicero assumes that the exposure of Scamander involved the guilt of Oppianicus: he represents Scamander as having acted at his instigation. See Introd., p. xvi. *sqq.*

§ 49. honeste, *i.e.* with credit either to the jury or to himself.

ita ... ut ... condemnatus in iudicium venerit. *Condemnatus* is predicative: he was a convicted criminal before he was put on trial. For *ita ... ut,* lit. 'under such conditions ... that,' cp. § 88, *ita multum agitata ... ut*; § 112, *ita tulerunt ... ut ... putarent*; § 143. Roby, § 1704.

semel atque iterum, 'more than once.' In such phrases *atque* amplifies or corrects: lit. 'once, or rather twice.' So *semel atque iterum ac saepius,* pro Font. § 26: cp. χθές τε καὶ πρώην. The reference is to the conviction first of Scamander and then of Fabricius

detulit, sc. *ad praetorem.* It then rested with the praetor to whom application was made to enter the name on the list of accused persons (*nomen accipere, recipere*). Under the empire the word *delatores* was used to denote those who made a practice of lodging accusations,—professional prosecutors.

Integrum consilium, sc. *erat*, 'there was no bias on the part of the jury.' Cp. § 47, and also *res integra*, § 57.

simplex causa, 'a simple, straightforward (*Scotice*, 'aefauld') issue.'

certa res, 'an ascertained fact.'

vicinitatem. Cicero's birth-place, Arpinum, was about sixteen miles S.E. of Aletrium.

cum plerisque eorum, 'with most of them.' See on § 39.

frequentes: as § 197. For the singular, cp. on § 54.

suae dignitatis. They thought it 'concerned their own credit.' See on *vestri auxilii*, § 4, and cp. *humanitatis ... impudentiae*, § 57.

idque is accusative after *facerem*, *id ut facerem* being equivalent to *ut Fabricium defenderem.* The *et* following is epexegetic: the best way to protect Fabricius was to undertake Scamander's defence.

causam ... in qua causa. The repetition of the antecedent in the relative clause—especially frequent in Caesar—is not very uncommon in Cicero: cp. §§ 62, 90, 148, 156, 184.

periculum, 'of the danger of conviction': cp. §§ 51, 117, 118. Also § 153, *iudiciorum novorum periculis*, 'liability to new-fangled commissions.' Similarly *salus* often denotes deliverance from that danger, *i.e.* acquittal.

§ 50. illis talibus viris. See on § 3 *ad fin.*

XVIII. **accusabat autem ille quidem.** *Ille quidem* restricts and contrasts: tr. 'but *while he* limited his impeachment of Scamander to the three words POISON WAS DISCOVERED, *it was against Oppianicus* that the whole artillery of the prosecution was directed.' This is not an instance of the simple adversative use of *quidem*, *e.g.* § 54, *re quidem vera*: § 132, *locum quidem ... reliquit.* The word here intimates an antithesis, which follows asyndetically as in *Phil.* vii. 14, *ea ipsa depulimus nos quidem: extorquenda sunt.* For the tendency to strengthen *quidem* by the insertion of the pronoun cp. *pro Marcello*, § 9, *Itaque, C. Caesar, bellicae tuae laudes celebrabuntur illae quidem ... sed tamen*, etc. The juxtaposition of *quidem* with a personal pronoun, when it

really affects the whole sentence, is very common: *de Fato*, § 3, *oratorias exercitationes non tu quidem, ut spero, reliquisti, sed certe philosophiam illis anteposuisti*: *ad Fam.* iv. § 2, *at contra nobis (videris) non tu quidem vacuus molestiis, sed prae nobis beatus*: *Brut.* § 128, *P. Scipio ... non multum ille quidem nec saepe dicebat, sed ... omnes sale facetiisque superabat*: *de Fin.* v. 20, *fruendi rebus iis .... Carneades non ille quidem auctor sed defensor disserendi causa fuit*: *ib.* i. 16, *cum miraretur ille quidem utrumque Phaedrum autem etiam amaret.*

tribus verbis. This phrase occurs as a colloquialism (a 'couple of words') in *Mil. Glor.* 1020: cp. *Trin.* 963, *te tribus verbis volo*, 'just a word with you.' But this is not a sufficient reason for deleting, with Pluygers, *Venenum esse deprehensum* as the gloss of some copyist who sought to supply three actual words. Cp. *ad Fam.* ix. 19. 1, *tribus primis verbis. Quid noster Paetus?* Cannutius was probably well-advised to state the indictment in general terms: there was no evidence that the poison had been detected *on Scamander's person* (Intro. p. xviii.).

vita et audacia: hendiadys, his 'career of effrontery.' See on § 13.

ad extremum ... conclusa est, 'culminated in.' So *pro Mur.* § 41, *tua sors ... ad extremum* ('to crown all') *ludorum voluptate concluditur.*

§ 51. magno cum metu. For other references to Cicero's nervousness, see especially *de Or.* i. § 121, *Equidem ... in me ipso saepissime experior ut et exalbescam in principiis dicendi et tota mente atque artubus omnibus contremiscam*: where Prof. Wilkins compares *Div. in Caec.* § 41, and *pro Deiot.* § 1. So Quint. xi. 1. 44, *illa Ciceronis confessione, non modo se animo commoveri sed etiam corpore ipso perhorrescere*: Plut. *Cic.* 35.

ingenii, 'ability.'

virtutis atque officii, 'character and sense of honour': cp. *officio defensionis*, § 10. These words are taken up in what follows. It would be shameless (*impudentia*) to promise more than one could perform, *non enim pudendo, sed non faciendo id quod non decet impudentiae nomen effigere debemus*, *de Or.* i. § 120: on the other hand one would be guilty of bad faith (*perfidia*) or else would give proof of indifference (*neglegentia*) if one did not do one's best.

quod non possim [implere]. *Implere* may easily be a gloss, though an infinitive would not be out of place. If we can suppose that *im-* arose by dittography after *possim* it

would not be difficult to convert *-plere* into *praestare,* which I have accordingly suggested as the true reading.

in eius modi causa, 'with so poor a case.' Cp. *in eius modi iniuriis,* § 13 : *in minus firmis causis,* below.

XIX. **Collegi me.** This phrase is exactly equivalent to the colloquial 'I pulled myself together' : the orator recovered his *constantia* or self-possession. Cp. Eur. *Herc. Main.* 627, σύ τ', ὦ γύναι μοι, σύλλογον ψυχῆς λαβὲ Τρόμου τε παῦσαι.

fortiter esse agendum, 'that I must put a bold face upon it.'

illi aetati qua, etc. This sentence depends loosely on *constitui* : 'I bethought me that it is generally reckoned to the credit of a young pleader, such as I then was,' etc. In B.C. 74 Cicero was thirty-two. For the abstract *illi aetati* cp. § 168 *ut aetas illa fert,* 'as young men like him will do' : so also § 13, above.

periculis : cp. *patroni omne periculum,* § 49.

non defuissem. For the transition from the general to the particular, cp. *a nobis,* § 3.

Itaque feci : 'and so I did.'

omnia ... remedia ac perfugia causarum : 'every legal shift and loophole.'

quod timide dicam, 'though I say so with diffidence.' Cicero's usage would seem to show that *dicam* is future : *pro Planc.* § 24, *timide dicam, sed tamen dicendum est* : *Phil.* xii. § 24, *timide hoc dicam* : *scio enim,* etc.: *pro Sulla,* § 80. So *paene dicam,* § 193.

§ 52. **quidquid** for *quidque* is rare in Cicero, but common in early Latin : Plaut. *Trin.* 881, *si unum quidquid singillatim et placide percontabere,* Ter. *Adelph.* 590. Cp. Lucr. i. 289 : Cic. *ad Fam.* vi. 1. 1, Tusc. iv. 44, v. 58. Madvig (on Fin. v. 24) doubts if the use can be extended to other genders than the neuter. The force of the indefinite relative may be brought out by rendering 'As fast as I laid hold of any point, no matter what.'

apprehenderam. For the iterative use of the plpf. indic., followed by an imperfect (*extorquebat,* 'he would wrest it from me') cp. Liv. xxi. 22, *ut cuiusque sors exciderat, alacer arma raptim capiebat* : *pro Sest.* § 68, *quisquis erat ... quocumque venerat ... damnabatur* : *Verr.* i. § 19, *ut quisque me viderat narrabat.* Similarly Sall. *Jug.* L. *ad fin.,* *si ab persequendo hostes deterrere nequiverant, disiectos ... circumveniebant.* After the introductory sentence in the text, the construction is quite naturally maintained in *Si quaesiveram*

... *Sin autem illud egeram* (though these are not 'iteratives' like *apprehenderam*), and then passes as naturally into *Cum* ... *usus essem, Cum* ... *commoratus essem*: imperfects being retained in the apodosis throughout.

quae inimicitiae Scamandro cum Habito. Here Kayser proposed to insert *fuissent*, but it might almost seem as if the verb had been intentionally omitted by Cicero in order to give point to the double assertion, *fuisse atque esse*, with which the sentence closes.

hominis ... exercitati, 'a past-master in the art of wife murder.'

ventura fuisse, *i.e.* 'in the event of Cluentius's death.'

patrono ... probatum, 'bore a good character with his master.' *Probatus* with a dative has an adjectival sense: so *Verr.* ii. 17, *si cuiquam generi hominum ... probatus sit*: and the superlative *tibi probatissimos*, Ligar. § 32. Scamander was 'acceptable to' his master. Fabricius had tested him and found him not wanting: he 'vouched' for him. Cp. Lucil. *ap. Non.* 437, *tuam probatam mi et spectatam adulescentiam*: Tac. *Ann.* iii. 16, *quondam divo Augusto parenti tuo probatus.* So absolutely § 138 (*iudicia*) *quae probata non essent.*

§ **53. hoc cuivis usu venire posse,** 'adding that such an accident might occur to anybody.' *Usu* is an ablative of manner: lit. 'to come in practice': Caes. *B. G.* vii. 9, *quod haec de Vercingetorige usu ventura opinione praeceperat.*

hoc loco, 'at this point,' 'in this part of my argument.'

testibus. The witnesses are regarded as instruments rather than as real agents, hence the abl. without prep. Cp. *ad Q. Fr.* iii. 3, *Odio premitur omnium generum, maxime testibus caeditur.* Tr. 'My case broke down under the weight of evidence given by highly reputable persons.'

de suo consilio, 'at his suggestion.' For this use of *de*, of the 'basis or starting-point,' see Roby, § 1907. Cp. on *de integro*, § 177.

cum veneno pecuniaque. On the 'enlargement' of the narrative, as now unfolded by Cicero, see Introd., p. xviii.

Habito, 'against Habitus,' dat. incommodi. Cp. Plaut. *Bacch.* 360, *Quom sciverit nos aurum abusos, quid mihi fiet postea?* Cic. *ad Att.* vii. 3. 2, *Quid enim tibi faciam?* See on § 186.

§ **54. verbo ... re quidem vera:** λόγῳ μέν ... ἔργῳ δέ. For this adversative use of *quidem* (as also § 132) cp. *pro Sest.* § 15, *intentus est arcus in me unum, sicut vulgo ignari rerum*

loquebantur, re quidem in universam rem publicam. Nägelsbach[8], 195 c. pp. 729-730.

tota accusatione: abl. of place without preposition, as often even in prose with *totus, medius.* So Caes. *B. G.* vi. 37, *totis trepidatur castris.* These words apply to both parts of the antithesis, *verbo ... re quidem vera et periculo.*

neque id obscure ferebat, 'and he was at no pains to conceal the fact.' So Liv. xxii. 14 *ad fin., Ac ... haud dubie ferebant Minucium Fabio duci praelaturos, i.e.* they declared unhesitatingly, etc.

frequens, adverbial, 'he turned up regularly in court.' So *pro Rosc.* § 16, *erat ille Romae frequens*: in *Verr.* v. § 33, *in quibus (castris) cum frequens fuisset*: *de Sen.* § 38, *venio in senatum frequens*: Tac. *Ann.* xiii. 35, *Ipse ... frequens adesse.* For the plural, see on § 49.

advocabat, 'he kept beating up his supporters.' So *advocatus,* 'a backer' of one who lends his countenance to a friend by attending in court to support him. Cp. *Phil.* i. 16, *Vellem adesset Antonius modo sine advocatis*: Dem. *de Cor.* 275, 20, οἱ ἐκ παρακλήσεως συγκαθήμενοι.

hoc ipso in loco, *i.e.* on the benches reserved for the defence. So *in hisce subselliis, pro Rosc. Am.* § 59. Cicero regularly uses the preposition with *sedere,* instead of the simple ablative. Cp. § 147.

suspensus incertusque vultus, 'his restless and anxious looks.' The same combination of adjectives occurs in *de Leg. Agr.* ii. § 66. *Suspensus* = μετέωρος, 'distrait.'

XX. **§ 55. in consilium iri,** impersonal. Tr. 'When the time came for the jury to deliberate on their verdict.' So the presiding judge was said *mittere in consilium,* § 83: cp. §§ 74, 75, in which latter passage the phrase *consurgitur in consilium* seems to show that the jury had an opportunity of retiring to consult, though it is possible to hold that such expressions are merely technical phrases indicating that the jury proceeded to record their votes, leaving their seats no doubt, but not necessarily retiring for consultation. Below *Itum est in consilium. Omnibus sententiis,* etc., reads as if it were in responding to some roll-call that the verdict became at once apparent. Cp. *pro Caec.* § 29. The word *consilium* is regularly used of a select deliberative body: here of the *iudices* regarded as the assessors of the presiding magistrate (*quaesitor*).

ex lege Cornelia. This clause must be construed with *quaesivit,* not with *quaesitor.* The provision was afterwards repealed: cp. § 75, *quae tum erat potestas.*

de Oppianici sententia. See on *de suo consilio*, § 53.

prima actione, 'on the first hearing of the case': so § 103, and *primo condemnare*, § 76, where see note. Where the jury intimated by a verdict of 'not proven' (*non liquet*) that they could not make up their minds about a case, the presiding magistrate had power to declare that it must be further investigated (*amplius cognoscendum*). This led to a *secunda actio.*

quod Habito daretur, final, 'in order that it might be given.' Tr. 'that the poison which had been procured was intended to be given to Habitus.' So § 62, *venenum quaesitum quo Habitus necaretur.*

sua sponte, 'of his own initiative,' from private motives of his own, instead of being instigated by Oppianicus.

§ 56. re et existimatione, 'virtually and in the eyes of men.'

lege et pronuntiatione, 'by express judicial sentence,' as § 59, *legis vi et sententiis iudicum.* For *pronuntiatio*, of the formal announcement of the verdict by the marshal of the court (*praeco*) cp. § 73, *placuit repente pronuntiari* DIXERUNT.

iudices, of juries in general, not 'the jury.'

consilia conscientiasque, 'design and complicity': abstract for concrete. Tr. 'the abettors and accomplices of such crimes.' For the plural *conscientiae* ('cases of complicity') cp. *pro Rosc. Am.* § 67, where there is also a similar alliteration, *malae cogitationes conscientiaeque animi*: Parad. ii. § 18, *te conscientiae stimulant maleficiorum tuorum* (the 'stings' of a guilty conscience).

familiaritatem Oppianici, 'his intimacy with Oppianicus.' For this genitive cp. *coniugium Paulli*, Propert. v. 11. 11, 'the fact that I was the wife of Paullus.'

conscium illi facinori. The genitive is more common: cp. *conscium maleficii*, § 59.

locus primus, *i.e.* the first place on the list of causes. The *iudices* appointed to any *quaestio* had the right of settling for themselves the order in which cases were to be taken.

causae coniunctionem, *i.e.* the connection of this case with the previous one.

laudatoribus, 'witnesses to character': cp. §§ 196, 197.

§ 57. integram, *i.e.* before it had been compromised by the verdict given in Scamander's case. The word is in contrast to *iudicatam* below.

hominis non alieni, 'a person with whom we were not unconnected.'

in causa eius modi, *i.e.* his case was so 'shaky.' For *in* see §§ 13, 32.

in honore ... ponerent, 'took as a compliment.' Cp. *non omnes ... in culpa sunt ac suspicione ponendi,* § 127.

XXI. **Iam hoc prope iniquissime comparatum est quod,** etc., 'It is a most unfair arrangement that,' etc. So Ter. *Phormio,* 41, *Quam inique comparatumst, i qui minus habent Ut semper aliquid addant ditioribus.*—One of Lagomarsini's codices gave *Iam hoc quoque prope* perhaps for *Iam hoc quidem prope,* etc.

difficillimus, 'hard to treat.'

nobilissimus, of reputation or distinction (*gno-bilis*). We have here an instance of chiasmus, *obscurissimus* being opposed to *nobilissimus* and *deterrimus* to *optimus.*

in periculis capitis, 'in trials involving civil death.' See on § 25.

nisi forte hoc causae est, etc. *Nisi forte* is not used here, as often in Cicero (cp. note on Quint. x. 5, § 6) to introduce an ironical argument, stating an untenable alternative, and thereby establishing the statement previously made by a *reductio ad absurdum.* Tr. 'The reason may perhaps be this, that whereas ... a pleader must lend the weight of his moral influence (*auctoritas,* § 6) as well.' The mere pettifogging attorney (*obscurissimus patronus*) does not need to think of that.

§ 58. Citatur reus. After these words most MSS. have *agitur causa,* and many editors accept the addition: Müller and Faussett bracket. Even more significant, however, than their omission in S is the misplacement of these words in T, *paucis agitur causa verbis.* They have no place in the text, and have obviously crept in from the margin where *Agitur causa* (*ag̃ cā*) stood as a marginal guide to what was probably a well-known passage. In § 72 below we shall find reason to believe that *queritur se ab Oppianico destitutum* is a similar marginal note which has also made its way into the text. Cp. § 173.

ut de re iudicata, to be taken closely with *paucis verbis*: cp. on *ut in tantis iniuriis,* § 14. Cannutius stated his case shortly, regarding the issue as already decided.

alte petito. See on *longius,* § 11.

etiam ipse, *i.e.* quite gratuitously. He should have left the mangling and maiming of his case to the other side.

quamquam sedulo faciebat, 'though he was really doing his best.' For the phrase cp. Plaut. *Rud.* 242, *Fit sedulo*: Ter. *Eun.* 361 *Faciam sedulo.*

praevaricari accusationi, 'to be acting in collusion with the prosecution.' The word is more usually (*e.g.* § 87) employed of a prosecutor who plays into the hands of the defence by concealing true charges, and generally by the crooked conduct (*prae, varus*) of his case. Most editors reject *accusationi* on the ground that *praevaricari* is not found elsewhere in Cicero with a dative.

ex intimo artificio, 'from the secrets of his stock-in-trade.' For *artificium,* of technical knowledge, or system, cp. § 72.

§ 59. cetera de illo loco, 'the rest of his clap-trap,' *i.e.*, the *verba gravissima,* conveying the hackneyed appeal *Respicite ... respicite. De* is here not 'concerning,' but of the 'source from which': § 90. *Loco = loco communi,* a 'stock passage.' For these *loci communes* see note on Quint. x. 5. 12: and cp. ib. vi. 1.

collo obtorto, 'by the scruff of the neck.' So Plaut. *Rud.* 853, *Poen.* 789: *obtorta gula, Verr.* iv. § 24.

reliqua ... perorare, 'to conclude his peroration.'

XXII. **Fabriciorum,** *i.e.* C. Fabricius and his accomplice Scamander. So *Fabricios,* §§ 60, 62. Only one of the brothers was alive at the time (§ 47). Scamander again, as *libertus* of the Fabricii, might take the family name.

locus primus. See on § 56.

quae nunc ego omnia omitto. This is the reading of s supported by w, though in the latter *ego* has dropped out. *Nunc* was probably above the line in the archetype: hence its omission in T, and its transposition in FM (*ego omnia nunc*). But it probably formed part of the original text.

ministrum Oppianici. Pluygers proposed to bracket *Oppianici,* but there is an evident emphasis in the repetition of the name: cp. *de Oppianico iudicarant,* immediately above.

§ 60. Utrum, *i.e.* which of the alternatives presented in the two following clauses, each introduced by *quod* ('the fact that,' etc.).

omnino ... ausus est, *i.e.* that he ventured on any reply at all. For this use of *omnino* (τὸ παράπαν) cp. § 168.

in Oppianico. For this use of *in* c. abl. see on *in eius modi iniuriis,* § 13.

debuerunt, *i.e.* as a matter of fact—even granting that Fabricius and Scamander (*Fabricios*) had been wrongly sentenced—they were bound to be consistent. The statement contained in *debuerunt* is independent of the condition. So often *possum, licet*: Roby, § 1566.

An vero ... rescinderent? The *An* here is really disjunctive, the first alternative being involved in the preceding clause. Originally *an* may have been a simple interrogative, but a comparison of instances from the text of this speech will show that its characteristic use in Cicero is to introduce somewhat abrupt questions (*or, then*) containing a remonstrance or an ironical alternative. Here *An ... rescinderent* serves to urge the acceptance of the proposition laid down in the preceding sentence: lit. "Or ought they to have cancelled": "you would not have had them cancel their previous verdicts, would you?" So § 65, *Quid tacetis? An negare non potestis?* 'You can't deny then?': § 136, *Suscepit causam. An potuit ... repudiare*, 'It took the matter up. Well, it couldn't have let it alone, could it?": § 181, *Quid quisquam suspicari aliud potest? An hoc dicitis*, 'You don't say do you?'

rescinderent—absolverent—liberarent: dubitative subjunctives, or 'past deliberatives,' of circumstances no longer existing. Roby, § 1604.

cum ceteri. Cp. on *Ita quod ceteri*, etc., § 28.

principem ... architectum, 'prime-agent,' 'arch-contriver.' For this use of *architectus*, cp. *Rosc. Am.* § 132, *omnium architectum et machinatorem*: *Leg. Agr.* i. § 11, *architectus legis.*

ex ipsa causa, 'judging by the bare facts.'

quem ... acceperant, *i.e.* he had already been twice convicted before he came to them.

§ 61. illa iudicia senatoria, referring to the old senatorial monopoly of the law-courts, which was still in force at the time of trial of Oppianicus, B.C. 74. Under the compromise effected in B.C. 70 by the *Lex Aurelia*, the jurors were now selected in equal proportions from the senate, the equites, and the *tribuni aerarii*. See Introd., p. xxix.

responderent, tr. 'what answer could they have made? Cp. the deliberative subj. *Quid facerem*, 'what was I to do?' in past time. Similarly *de Imp. Cn. Pomp.* § 31, *Hoc tantum bellum quis umquam arbitraretur ab uno imperatore confici posse?* who "would, could, or should have thought," the English idiom implying a reference to the moment of speaking.

si qui is found in the best MSS., for the more usual *si quis.* There is really no difference between the two forms, though hiatus seems to have been avoided with a short *i* following. See *Reisig-Haase*, note 356, p. 61.

quod ... voluisset. This is the rejoinder made by the jurors: the subj. implies that the *crimen* is not stated by

them as a fact, but as an alleged fact. Tr. 'Why, because he had tried, as was alleged,' etc.

quid ita, sc. *fecistis.*

non probabatur, *i.e.* the view did not commend itself to us. Cp. § 101.

§ 62. hoc is subsequently expanded in *illo iudicio reum condemnari ... necesse fuisse.*

hac omni oratione = by all that I have been saying.

nullam accusatori causam esse potuisse. I prefer this reading (against ST) on the strength of the analogy of § 20, *nullam huic aliam accusandi causam fuisse.*

XXIII. **de te.** The reading of ST has now displaced the traditional *Quaero enim abs te.* *Quaerere ab aliquo* is the more usual construction : with *de* (or *ex*) the verb may either mean to ask a question, as here, or to examine by torture (§ 176).

T. Acci. Accius was a young *eques* of Pisaurum in Umbria : *Brutus*, § 271.

Fabricios, *i.e.* C. Fabricius and his accomplice Scamander. So § 59.

illa iudicia ... quibus in iudiciis, Cp. on § 49. I take the reading of ST, *in iudiciis*, rather than *iudiciis* : see on § 100.

alter Scamander (§ 55) : **alter** Fabricius (§ 59).

cuius maleficii, sc. *condemnati sunt?*

inquam, 'I repeat.'

tabulae publicae. This phrase is used of all kinds of official records, *e.g.* § 86, the roll of cases to be tried : *Arch.* § 9, the register of new citizens enrolled after the Social War : *Balb.* § 11, the accounts of money disbursed by a provincial governor.

non modo ... sed in ... loco, 'I do not say as a direct charge but even by way of an aspersion.' For *loco* (ἐν μέρει), cp. my note on Tac. *Dial.* 26, 10.

§ 63. occurram exspectationi vestrae, 'I shall hasten to meet your anticipations,' *i.e.* to satisfy your impatience.

vocat ... iam dudum. Cp. on *audiatur*, § 7.

tacita, 'unexpressed.' See on § 7.

Opinor, primum, etc. At first sight it is tempting to emend the text into *Opinor ... veri similius tamen esse* (for *esset*) : but for *opinor* out of construction at the beginning of a sentence, cp. *pro Caecina*, § 89 ; *pro Quinct.* § 76 ; *Verr.* i. § 29. For the imperfect in the apodosis, *esset* for *fuisset* (the

past being represented as a "continuing state"), cp. Livy, ix. 19, *Persas, Indos, aliasque si adiunxisset gentes, impedimentum maius quam auxilium traheret*; *Phil.* ii. § 63, *si inter cenam ... hoc tibi accidisset, quis non turpe duceret*; so also *Verr.* § 4; *ibid.* § 80; *Phil.* iii. § 12.

deinde: supply (after *cum ... necesse esset*) *veri similius esset, opinor.* With *eum certe potius* repeat *corrupisse.*

qui sibi alia ratione diffideret, 'who had no other resource to trust to,' *i.e.* than bribery. *Alia ratione*, literally, 'on any other method': cp. *qui spem salutis in alia ratione non habuerit*, below. The antithesis (*alia ratione diffideret*), *omni ratione confideret*, may be rendered 'no other ground of confidence,' 'every ground of confidence.'

offendisset. See on *offensio*, § 10. Tr. 'had come to grief.'

§ 64. non ab Habito, sc. *iudicium corruptum esse.* The third hypothesis—that both parties were guilty—is carefully eliminated. See Introd. p. xxi.-xxii.

de illo ipso, probably masculine, 'about Oppianicus.' The phrase might, however, have reference to the preceding clause, 'on that very point,' *i.e.* the bribery by Oppianicus.

XXIV. **qui in periculo fuerit**, 'whose status was imperilled. For this use of *periculum*, cp. on § 49.

§ 65. Statium Albium, sc. *Oppianicum.* So also § 9.

tacita pietate, 'in mute devotion, 'silent but loyal.' This was the younger Oppianicus, the prosecutor in the case.

in eo loco, 'where you sit,' *i.e. in subselliis accusatorum*: so § 168, *ex illo loco*: cp. § 79, *hoc praesertim in loco*; § 54, *hoc ipso in loco.* This is the reading of most codd., which I retain with some hesitation, against the authority of STF. The alternative *meo loco* is explained as = *etsi meus dicendi est locus*, 'though it is my turn to speak,' and the analogy of *νῦν δειξάτω ἐν τῷ ἐμῷ ὕδατι* (Dem. *de Cor.* § 139) adds point to the reading: Cicero gives the prosecutor and his counsel leave to interpose a statement rebutting the assertion just made. But *meo loco* should strictly mean 'in my stead,' 'as a substitute for me': *pro Dom.* § 82, *ubi tu cavisti ne meo me loco censor in senatum legeret?* And Madvig's emendation on *Rosc. Am.* § 73 (*meo loco* for *in eo loco*) does not seem to me to be at all convincing. The passage in question is, *Ita quaero abs te, C. Eruci, quo modo, et sic tecum agam ut* in eo loco (so all MSS.) *vel respondendi vel interpellandi tibi potestatem faciam, vel etiam, si quid voles, interrogandi. In eo loco* is here quite intelligible, and really involves the other reading: if Erucius rose in his place,

Cicero would give way. Moreover, *meo loco* seems hardly so appropriate to *interpellandi* or *interrogandi* as to *respondendi*, whereas *in eo loco* goes equally well with all three.

an negare non potestis, 'You are unable, are you not?' etc. Cp. § 181, *An hoc dicitis?* 'You don't say, do you?' and see note on § 60.

repetistis ... abstulistis. See § 78.

Quo ... ore, 'How can you have the face to speak of bribery?' For *os*, 'effrontery,' cp. *de Or.* i. 175, *quod tandem os est eius patroni qui*, etc. Cp. our word 'brazen-faced': Ovid, *Epist. ex Pont.* i. 1, 80, *Plus isto duri, si precer, oris ero.* So in Greek, τέοισι ὄμμασι, Herod. i. 37, and ποίοις ὄμμασι, Soph. *O. T.* 1371.

cum ab ista parte ... fateamini, 'when it was by your side, as you acknowledge, that,' etc.

§ 66. Repetam paulo altius, 'I shall carry the thread of my narrative a little further back.' See on *longius*, § 11.

Vos quaeso ... item quae reliqua sunt audiatis. There is an interesting point of criticism in regard to the true reading here. *Vos* is, of course, not governed by *quaeso*, which is inserted more or less parenthetically (like *amabo*, *obsecro*, etc.): and if we may follow the analogy of § 30, *vos quaeso memoria teneatis*, we should say that here *audiatis* is jussive subjunctive in semi-dependence on *quaeso*. But ST give *ut item*, a reading which I reject, though it is adopted by Baiter, Müller, and Faussett: to explain it one would have to suppose that *vos* is direct accusative after *quaeso*, and that it takes the ordinary government of verbs of asking. But while *Quaeso a vobis* is common enough, Cicero has *quaeso* only with a direct accusative along with another verb: *quaeso oroque vos patres conscripti, ut*, etc., *Phil.* vii. § 8; *te precor ac quaeso, pro Domo*, § 144, and *quaeso obtestorque vos*, ibid. *ad fin.* Now *vos* is here certainly not accusative: nor is it vocative, like *pro Quinct.* § 36, *Quaeso, C. Aquilli, vosque qui estis in consilio, ut*, etc. It follows, therefore, that it is nominative, in which case the *ut* before *item* was probably inserted by a scribe who misunderstood the construction,—probably helped by the parenthesis, *ut adhuc me attente audistis.* For similar uses of *quaeso* in this speech, cp. § 8, *quaeso ut me, iudices, sicut facere instituistis, benigne attenteque audiatis*; § 11, *quod quaeso, iudices, ne moleste patiamini*: cp. also (for the position of the pronoun) § 135, *tu consideres censeo diligenter*; § 195, *vos ne condonetis rogamus*; § 196, *vos quaeso qui eam detulistis adsurgite.*

vestris studiis atque auribus, 'a sympathetic hearing from you.'

esse videatur. For this favourite ending see Quint. x. 2, § 18, and Tac. *Dial.* 23, 3, with notes. Again at § 118 ; *esse videantur*, §§ 8, 41.

applicavit. Most MSS. have *se applicavit*, and editors (except Classen and Ramsay) adhere to this tradition. But this is a clear instance of the tendency on the part of a scribe to repeat a word immediately before the word it governs. For the position of *se* cp. § 46, *ad fin.*

donis muneribusque. The simplest explanation of the variants here (see crit. notes) seems to be that *datis* is an adscript (cp. *data*, § 87. 26) : in the recension embodied in ST *donis* was rejected, as well as the *que* after *muneribus* (which would not be difficult with *p* following). *Dona* and *munera* are frequently conjoined : *e.g.* § 190.

fautore ... cupidiore, 'a more interested supporter.' For this sense of *cupidus* ('biassed,' 'partial'), cp. *pro Caec.* § 8, *cupidior quam sapientem iudicem esse aequum est.* So *testis cupidus, de Or.* ii. § 229, *pro Font.* § 21 : cp. *cupiditas*, for 'partisan spirit,' § 152, *Verr. A. P.* § 35 ; *pro Planc.* § 43.

postulabat. So § 200, *id quod vestra natura postulat.*

§ 67. unius Staieni sententia absolutus. Here the words *sententia absolutus* have been suspected as an interpolation : they are accordingly omitted or bracketed in many texts. The case seems to be analogous to *satis facere* in § 10, where see note : cp. *arbitrabantur*, § 50. The suppression of the words would make the sentence more compact, but such redundancy is just what is most characteristic of the orator. It may reveal the absence of the pruning-hook, but that is no sufficient reason for rejecting what is found in all MSS.

ne sua quidem sententia. For the discomfiture of Fabricius, see §§ 58 and 59.

acrioribus remediis, 'more drastic measures,' abl. of instrument.

salus (as in § 3) is deliverance from *periculum*, § 18 : cp. *saluti desperare*, § 68.

ad excogitandum acutissimo. For this use of *ad*, see on *ad fraudem callidi*, § 183.

capiti ac fortunis suis, 'his standing and estate.' For *caput*, see on § 20. : for *fortunae*, see on § 186.

XXV. **Iam hoc.** For this use of *Iam*, see on § 47. *Hoc* anticipates *ut ... revertantur.*

aliquando, with *pastae sint*, 'at some time or other.' *Aliquando* may have been written in above the line in the

archetype: ST give *sint* (*sunt* T) *aliquando*, the other MSS. *aliquando sint*, while W omits *aliquando* altogether.

§ **68. causam bonorum Safini Atellae**, 'the case of Safinius Atella's estate.' Safinius seems to have been a *pupillus*, or minor, whose estate, being greatly encumbered, had been allowed to come to the hammer,—the purchasers (*bonorum emptores*) taking it over bodily, assets and obligations together. Safinius brought an action against his guardians, and placed a sum of 600,000 sesterces in the hands of Staienus to secure a favourable verdict. This money Staienus kept to himself. He 'stopped' it (*suppressit*): it went no further than himself (cp. § 75, and *suppressiones iudiciales*, below). When judgment was rendered he neither made restitution to Safinius, nor did he hand over the money to the purchasers of the estate, *iudicio facto nec Safinio nec bonorum emptoribus reddidit*.

Nothing is said as to how the case went: we can only infer what the issue was from the fact that it was considered open to Staienus to pay over the money either to Safininus or to the *bonorum emptores*. It is generally supposed that Safinius lost. The analogy of Staienus's conduct in the case of Oppianicus (§ 69, *ad fin.*) is referred to. But this is somewhat misleading, as the circumstances of the two trials were different. Staienus calculated that the *conviction of Oppianicus* would leave him with the money in hand (*damnato repetiturum esse neminem*, § 69), but the *failure of Safinius to make good his case against his guardians* could not be expected to have the same result. It is more probable that Safinius won. Of the two alternative courses open to Staienus, restitution to Safinius is mentioned first: and it seems a fair inference that the natural step for Staienus to have taken would have been to refund to Safinius money which had been given to him for a particular purpose, and which had either not been required to influence the court in favour of Safinius, or had been kept back by Staienus from purely interested motives. The suggestion that, failing this, Staienus might have handed the money over to the *bonorum emptores*, may be explained in this way. The success of Safinius upset the purchase. The estate had probably been transferred and the money paid by the time Safinius came to be *sui iuris*, and in a position, therefore, to raise the action. The *bonorum emptores* would obviously have a claim for the return of the purchase money, and the suggestion is that, the case having been won without bribery, the money that had been placed at Staienus's disposal for that purpose could have been applied in partial satisfaction of that claim. It does not seem to be necessary to suppose, as editors do, that the money came out of the estate. Cer-

tainly if Safinius had *lost*, and the sale had been *upheld*, there would have been no point in giving him back what really belonged to the property that had passed from him.

recepisset. The more usual phrase is *causam suscipere*, §§ 39, 49, 136. *Recipere* implies more than *suscipere*, in respect that the person who 'undertakes' makes himself responsible for the issue. Cp. *de Or.* ii. § 101, *in quo est illa quidem magna offensio vel neglegentiae susceptis rebus vel perfidiae receptis*.

non modo for *non modo non*: see on § 9.

suppressiones iudiciales, 'embezzlement in courts of justice.'

iugulatum, lit. 'with his throat cut.' We might say that the two previous verdicts had 'left him without a leg to stand on.' This figurative use is very common in Cicero: cp. *Quinct.* § 44: *ad Att.* i. 16, 2, *cum illum plumbeo gladio iugulatum iri tamen diceret*: *ad Herenn.* iv. 51, *uno iudicio simul multos iugulaveritis.*

hominem. See on § 49; so again § 72.

§ 69. possit is the 'vivid' present, giving the very words of Staienus. An English equivalent would be: No one, he said, could do the business "except myself."

gravari, 'to hang back,' or 'back down.' It was to be no light task for him: he undertook it with reluctance, 'made difficulties' about it. Subsequently his scruples were overcome (*exoratus*). A pleonasm, very characteristic of Cicero, may be remarked in *gravari ... quod ... dicebat*: the verb of saying is, in fact, often itself put in the subjunctive. Roby, § 1746.

invidiam atque offensionem. This is one of Cicero's double phrases, 'unpopularity and displeasure,' *i.e.* popular displeasure: cp. *invidiam infamiamque*, § 79, and see on *manibus et gremio*, § 13. So *invidiam atque offensionem suscipere*, *Verr.* ii. § 137. For another meaning of *offensio*, see on § 10.

confici, 'made up,' 'got together,' as at § 74: **tr.** 'he came down to a negotiable figure.'

homo impurissimus, 'the dirty scoundrel.'

§ 70. cum animis vestris ... recordari, 'to recall to mind.' The explanation of the preposition seems to be that the mind is considered as assisting the effort of recollection: the mind and its owner are, in fact, in partnership over the effort of recollection, Nägelsbach[8], § 90, 2, p. 360. So Hom. *Od.* xv. 202, Ὣς φάτο· Νεστορίδης δ' ἄρ' ἑῷ συμφράσσατο θυμῷ: Plaut.

Aul. 707, *cum animo investigare*: Most. 702, *cogito cum meo animo*: *Heaut. Tim.* 385, *mecum in animo considero*: *in Verr.* iii. § 29, *considerate cum vestris animis vosmet ipsi*: Sall. *Jug.* 70 *ad fin. reputaret cum animo suo:* Plaut. *Trin.* 256, *Haec ego quom cum animo meo reputo.*

longo intervallo, *i.e.* though it is a long time ago now.

Nam perinde ut opinio, etc. Similarly *pro Sulla*, § 69, *quid quisque voluerit cogitarit admiserit non ex crimine sed ex moribus eius qui arguitur est ponderandum.*

XXVI. **miserrimis in locis et inanissimis,** in apposition with **domi suae**: tr. 'a wretched, poverty-stricken habitation.' Dr. Reid suggests that *locis* may be a corruption of *focis*,–*foci* being sometimes used of a single house.

quaeretur. So *quaesierat*, § 71 below; *quaesita*, § 94: cp. *quaestu iudiciario*, § 72; *quaestus forensis*, § 101.

Quid tandem introduces the question that follows: so *Quid tu?* § 71, § 72, § 82. Cp. our 'What?'

nihil enim, etc. The *enim* implies an ellipse: 'I put the question because,' etc.: cp. *vultus enim vestri*, § 89.

Praecipitantem, intrans. Tr. 'Well, he is tottering to his fall, let us give him a push.' Cp. *pro Rab. Post.* § 2, *Satis est homines imprudentia lapsos non erigere; urgere vero iacentes aut praecipitantes impellere certe est inhumanum.* For *impellamus* cp. also Tac. *Ann.* iv. 22; Plaut. *Aul.* 590.

perditum prosternamus. So *perditum perdere*, *Fam.* xiv. 1, 5: cp. also *urgere iacentes* in the passage just quoted. Tr. 'He is done for: let us administer the *coup de grâce.*' Note the alliteration.

§ 71. hoc consilii. Sc. *hoc testimonii*, § 73. This is the 'genitive of the indefinite whole,' dependent on a neuter adjective; also *nihil*, and some adverbs, *quo*, *eo*, etc.: Caes. *B.G.* iii. 24, *quid hostes consilii caperent exspectabat.* Roby, § 1296. So also *quidnam sententiae*, § 75; *aliquid conducti*, § 175.

destitutione, causal ablative, with *iratos*, 'enraged with Oppianicus for having played them false.' There must be some misrepresentation in the argument. Staienus had voted to acquit Scamander. Was it the other crimes of Oppianicus that convinced him he could not escape? And why was the verdict not practically unanimous? See Introd., p. xxi.

ut erat, etc. Cp. § 23.

praeposterus is used of one who puts the cart before the horse: **perversus** denotes a man of crooked ways. Tr. 'with his usual wrong-headedness and perversity.' Staienus ought

not to have begun with Bulbus: onions (*bulbi*) came in after dinner, not before. Reference may here be made to some illustrative matter contained in the notes to the editor's Translation of this speech, p. 133.

Quid tu, sc. *ais*: 'I say, Bulbus.' So again, '*Quid tu*' *inquit* '*Paete?*' § 72. Such elliptic questions, common in Plautus, serve to lead up to the further interrogative which they introduce.

adiuvas, present of endeavour: lit. 'are you ready, or willing to help me?'

ne gratis, etc. Tr. 'so that we may get something for being good citizens.'

appellet, of 'approaching' or 'making overtures': cp. § 194, *Quos appellarit ... tenemus.*

conditor totius negotii, 'the contriver and cooker-up of the whole scheme.' The double rendering is necessary to explain the pun on *condĭtor* (the 'seasoner': 'the head-cook') and *condĭtor* ('the author'). It is to be noted that parts of both verbs *condo* and *condio* occur immediately below, *pecuniae quam condiderat* and *condivisset*, § 73 *ad fin.*

Guttam aspergit huic Bulbo, etc., 'sprinkles some Gutta-seasoning on our vegetable friend Bulbus,' 'associates Mr. Cruet with Mr. Onion,' as we might say. *Gutta* as a common noun means a 'drop': and the reference is to the use of some dressing by which the natural bitterness (cp. *Itaque minime amarus* in what follows) of some *bulbi* was alleviated. See notes in Transl. pp. 133-4.

Atque etiam. See on § 74,

§ 72. aliquid speculae, 'a glimmer of hope,' or with reference to *degustarant*, a 'titbit.' So Fam. ii. 16. 5, *hac tamen oblectabar specula.*

Unus et alter: see on § 38

intercesserat cum, etc. For the constr. see on § 28.

sequester, 'an intermediary agent,' or 'depositary.' See on § 25.

confirmator, security.

ut blandissime potest, 'in his most insinuating manner.' The alternative reading *placidissime* (ST) does not seem so appropriate, following *hilaro vultu*: it may be noted that immediately below ST agree in wrongly giving *quaesivit* for *quaerunt.* [The confusion between *b* and *p* is seen again in *abortione*)(*potione*, § 125.]

hoc enim sibi Staienus cognomen, etc. On the plea of having been adopted, or rather having 'adopted himself'

(*Brut.* § 241) into a family belonging to the Gens Aelia, Staienus took the *cognomen* Paetus, and called himself C. Aelius Paetus Staienus. Such surnames were originally based, in many cases, on some physical peculiarity on the part of the founder of the family: *Paetus, e.g.* means 'squint-eyed': cp. *Balbus* ('stammerer'), *Naso* ('big-nose'), and many others.

ex imaginibus Aeliorum: tr. 'from the illustrious house of the Aelii.' The *Ius Imaginum* was the right possessed by families whose ancestors had held curule office at Rome to keep waxen images of those ancestors in the *atrium* of their houses: those images (busts, masks) were, as is well known, a conspicuous feature in funeral processions. For the question whether the *stemma*, or 'family tree' consisted of lines drawn from one *imago* to another, or was a separate genealogical chart, see note in Transl., pp. 134-5.

si se Ligurem fecisset. Cicero says that if Staienus had taken the *cognomen* Ligur, instead of Paetus, those who knew his character would have mistaken his nationality: he would have been taken, in fact, as belonging to the barbarous tribe of Ligurians. Cp. *pro Sest.* § 69, of Sextus Aelius Ligus, *qui cognomen sibi ex Aeliorum imaginibus adripuit, quo magis nationis eius esse quam generis videretur.*

nationis ... generis ... cognomine. People would have thought that Staienus 'was using a racial rather than a family surname.'—The reading *nationis magis suae quam* (Ramsay) has much to recommend it: tr. 'a race that was his,' and cp. *Prop.* ii. 9. 30, *aut mea si navis staret in oceano*, 'ship of mine.' *Suae* does not occur in ST, and this may point to a transposition variant, the true reading being *nationis suae magis quam.*

planus = πλάνος. Cp. Hor. *Ep.* i. 17. 59, *attollere fracto crure planum.*

quaestu iudiciario. Cp. *suppressiones iudiciales*, § 68, *quaestus forensis*, § 101.

qui ... incubaret. The subj. is concessive: *though* Staienus had the money stowed away, he pretended that Oppianicus had cheated him. Similarly below *qui ... esset factus ... condivisset:* the man was an accomplished liar himself, but he roundly asserted (*pulchre adseverat*) that the swindler was Oppianicus.

[queritur se ab Oppianico destitutum]. These words, though found in all MSS. and edd. after *simulatosque vultus*, have been excluded from the text. They have all the appearance of "index words," like *Agitur causa*, § 58, § 173. The sentence reads better without them, and they are in their proper place,

in a somewhat similar form, immediately below: *pulchre adseverat sese ab Oppianico destitutum.* Madvig and others have strangely suspected these latter words as not belonging to the original text. The repetition would indeed be intolerable, but I am convinced, from the whole structure of the sentence, that it is in *queritur se ab Oppianico destitutum* that we have a clear case of an adscript. They are just such words as would naturally be written in the margin to serve as a guide to a memorable passage.

totus ex fraude et mendacio factus. Mr. Faussett quotes *Q. Rosc.* § 20, *ex fraude, fallaciis, mendaciis constare totus videtur.*

studio atque artificio quodam malitiae: 'by zealous application, and by making roguery, so to say, his regular profession.' For *artificium*, cp. *ex intimo artificio*, § 58: *pro Rosc.* § 49, *non tu in isto artificio accusatorio callidior es quam hic in suo.*

testimonii. See on *consilii*, § 71.

laturi essent, sc. *sententias.* For *palam*, cp. §§ 55, 75.

XXVII. **§ 73. In ea ... omnium**: 'In this general mystification and uncertainty.'

quodam odore suspicionis. Cannutius had somehow 'got wind of' the conduct of Staienus. For the figure, cp. § 82, *Albiana pecunia vestigiisne nobis odoranda est?*

pronuntiari, *sc.* a *praecone.* When both sides had finished their pleadings, the crier of the court announced the fact in the formula DIXERUNT: whereupon the jury consulted together as to their verdict. For the impersonal use, cp. *reticeri*, § 18, and the instances cited there.

§ 74. In consilium ... ituri. See on § 55.

sententiis xvi. Staienus's vote was regarded as certain, and thus there would have been a majority for acquittal. A tie (16 votes to 16) would have resulted in *ampliatio.*

ut, 'on the supposition that,' 'in the expectation that.'

ad cumulum, 'to crown all,' lit. 'for a crown,' *cumulus* being here the 'crown' or 'summit' which completes the heap, not the heap itself. Tr., 'crowned as it would be with a seventeenth from Staienus himself.'

Atque etiam, a formula of continuation, as § 72 *ad init.*: tr., 'Well, but as luck would have it.' Cp. §§ 122, 163, 181.

apud iudicem, 'before an arbitrator,' 'civil commissioner.' Cp. § 120. Arbitrators in civil suits were appointed by the *praetor*, who issued a *formula* stating the legal points involved in the investigation which they were to conduct.

convicium ... fecit ut ne, 'protested in highly abusive language against.' **Ut ne** is practically equivalent to *ne*. See on § 16, and also on § 168.

sine illo, sc. *Staieno*. There is some point in the alternative reading *Aelio* (T). Quinctius wanted to make the most of the absent juror, and speaks of him by his aristocratic name.

pro potestate, 'in virtue of his tribunitian prerogative,' § 83, which gave Quinctius the right, not to block the proceedings of the court by *intercessio*, but to threaten the President with the pains and penalties of the law in case he disregarded his appeal.

§ 75. Consurgitur. See on § 55

nummarii pauci sed omnes irati: 'The venal ones among them, though not numerous, were all in a rage.' The statement is here made that only a few of the jurors had their price: cp. § 78 *ad fin.*, *in aliis non nullis*, § 79, *non nullorum eius similium*. This seems a sort of unconscious or involuntary compliment to the bench; Oppianicus certainly had calculated (§ 74) that there were sixteen ready to take his money. But in his whole account of this trial, Cicero is obviously trying to 'throw dust in the eyes of' the jury he is now addressing. See Introd., p. xxi.

omnes irati. The following sentence (*sic eiusmodi iudices infesti tum reo venerant*) shows that this is to be limited to the *nummarii iudices*.

in campo, 'at political elections,' held in the Campus Martius.

ex eis, sc. *sententiis*.

XXVIII. **Ecce tibi,** 'Lo and behold!' For the nominative *sortitio*, see on § 14.

Atque illi omnes, 'Well, all three': cp. § 74.

§ 76. iniectus est hominibus scrupulus: *i.e.* people began to feel uneasy.

ex vetere illa disciplina iudiciorum, 'men who belonged to the good old school of law-courts.' So § 107. For this use of *disciplina* ('school,' 'system,' or even 'traditions'), cp. *de Or.* i., § 3, *perturbationem disciplinae veteris*: ii., § 67, *disciplina civitatis*: *pro Rabir.* § 28, *ignarus disciplinae consuetudinisque nostrae.*

re illa incognita, 'without further investigation,' viz. of the surmise that bribery had been brought into the field against Oppianicus, *pecunia eum oppugnatum esse.*

primo = *primo actione* (§ 55): so *Verr.* i. § 26, *non primo iudicare*, opp. to *ampliare*. Cp. § 106, where *paulo posterius patefacta re* supplies an antithesis to *primo*. These jurors wanted a further hearing, and then (as Cicero wishes his hearers to infer) they would have voted 'Guilty.'

non liquere dixerunt, 'held the charge *not proven*.' Dr. Reid founds on the use of *dixerunt* here and at §§ 106, 131 (cp. *Caec.* § 29) to prove that the NL verdict was given orally and not in writing: see his note on *pro Milone*, § 15.

qui hoc statuerunt, etc. Their view was that *motives* should be taken into account. Bulbus, Staienus, and Gutta were supposed to have been bribed to vote against Oppianicus: these *severi homines* saw in this no reason why, believing him to be guilty, they should not vote according to their consciences. They acted in fact, as Cicero says in § 106, *sua sponte non Staieni fraude*.

iudicabant. In 'reported thought' we should have expected *iudicarent*. Exception has been taken to *statuerunt*, after *possent* ... *vellent* in the previous sentence, and with *putabant* following. *Statuerant* suggests itself as an easy emendation: cp. § 134, where all codd. give *consuerunt* for *consuerant*.

superioribus suis iudiciis, *i.e.* the verdicts against Scamander and Fabricius.

Quinque omnino, 'Five in all.' This solid fact should be noted for the analysis of the voting. It is probable that Oppianicus was convicted by a majority of only one vote: cp. on § 106, and see Introd., p. xxiii.

ambitione, 'interested motives.' So § 108, *qui absolvit ambitiosus*.

§ 77. homo maxime popularis, 'a thorough-going radical.'

qui ... consuesset, etc., 'who laid himself out to catch every breeze produced by town-talk and public meetings.' Cp. the use of *ventus*, § 130, and *rumor*, § 131. So *popularis aura* in Virgil and Horace.

invidia senatoria. The law-courts were at this time in the hands of the Senate: Introd., p. xxix.

probari populo. See on *patrono* ... *probatum*, § 52.

una atque altera. See on § 38.

contio, here a 'harangue': so § 127, *ut illae Quinctianae contiones habebantur*. Cp. note on § 103.

nulla esse iudicia, 'trial by jury was a thing of the past.'

virum ... hominem. So again § 120, *clarissimi viri sapientissimique homines*: § 136. The distinction generally drawn is that *vir* has reference to a man's public, *homo* to his private life. Here we might translate 'a good citizen and a man of the highest character.' *Vir* is the opposite of *femina*, and may naturally therefore be used with special reference to conduct in public life: *homo* is wider, 'human being.' Cp. *pro Q. Rosc.* § 19, *et virum optimum et hominem improbissimum*: Div. in *Caec.* § 56, *viro optimo et homini aequissimo.*

rem in medium vocare: as again, § 101, *in medium proferre.*

§ 78. T. Anni, sc. *Milonis.*

consulto, adverbial: really an instance of the impersonal use of the ablative absolute, cp. *sortito, auspicato, merito,* etc. "The use of the following clause dependent upon the abl. is begun in Cicero: *adiuncto ut* (*Off.* ii. 12, 42). Sallust uses *audito* and *comperto* with the infinitive. But Livy extends this construction very greatly, and introduces the use of neuter adjectives in the same way: *incerto prae tenebris quid aut peterent aut vitarent*, xxviii. 36. 12. It is frequent in Tacitus." Gildersleeve-Lodge.

in occulto: cp. *in publico*, § 27. The use of such adverbial phrases received a great extension in post-Ciceronian times, probably under the influence of Greek analogy. Cp. *ἐν ἀφανεῖ.* So in *medium* above = *ἐς μέσον.* Nägelsbach[8], § 21, p. 103.

in forum, *i.e.* into court. So *Top.* § 75 (of Staienus) *ea locutus est bonis viris subauscultantibus pariete interposito quibus patefactis in iudiciumque prolatis ille rei capitalis iure damnatus est.*

Staieno. The reading of P (for *a Staieno*, which occurs in the other codd.) may be supported from *Leg. Agr.* ii., § 19, *eripere vobis atque e manibus extorquere.* So *Iunio*, § 93.

XXIX. **persona**, of the 'rôle played,' 'the character assumed': cp. §§ 59, 101, 125.

pronuntiasset, not quite so binding a word as *promisisset*, or *pollicitus esset.* Staienus had 'given out' that the money would be forthcoming: cp. *ad Qu. Fr.* ii. 15 *b*, *ad fin.*, *vel HS centies constituerunt in praerogativa pronuntiare*: *pro Planc.* § 45: *ad Att.* i. 16. 13.

versatam ... mentionem pecuniae. So § 73.

in Bulbo, 'in the case of Bulbus.' Cp. in *Fausto*, § 94. Mr. Faussett compares *pro Rosc.* § 152, *in quo non modo culpa nulla sed ne suspicio quidem potuit consistere.*

§ 79. hoc praesertim in loco, 'speaking especially in this place': cp. § 5, *in hoc loco falsa invidia imbecilla esse debet.* For *iam impune*, cp. § 80 below: *temporis iniquitas atque invidia recessit.*

causam ... ageret, of the extra-judicial activity of Quinctius, who had acted as counsel for Oppianicus: cp. *haec tum agente Quinctio*, § 108

summa potestate praeditus. Quinctius was a tribune of the people, and even in the days of which Cicero is speaking (B.C. 74), while Sulla's legislation was still in force, the tribunes had great authority at Rome. The restrictions which Sulla had sought to impose on the tribunate, especially in regard to initiating legislation, were removed in B.C. 70.

invidiam infamiamque. So *invidiam atque offensionem*, § 69. For *conflatam*, cp. *quid invidia conflarit*, § 9, and see on § 18.

recentem of the still raging 'furnace of popular displeasure.' For the collocation *recentem tum*, cp. *tum recenti re*, § 84, and elsewhere.

qui illi quaestioni praefuerat is rejected by some editors. Cp. § 89.

memini, here with the perfect infinitive, of an event which is thought of as complete, and which is not intended to be represented as having come within the sphere of actual personal experience: cp. *esse damnatam*, after *memoria teneo*, § 32. The difference between the perfect and the present infinitive may be represented in English by 'I remember that he was cast' etc. for the former, and 'I remember his being cast' etc. for the latter.

iam praetorem ... constitutum, 'to whom general opinion pointed as a coming praetor.'—I have ventured to insert in the text *opinionibus omnium* for *opinionibus hominum.* The reading below, *clamore hominum,* seems needed to balance *disceptatione dicendi,* and the recurrence in close contiguity of *hominem aedilicium—opinionibus omnium*—and *clamore hominum* is not unlikely to have occasioned a difficulty with a copyist. Cp. § 157.

disceptatione dicendi. Cp. *Leg. Agr.* ii. § 57, *nulla disceptatione, nullo consilio: Planc.* § 87, *non disceptando decertandum ... armis fuit dimicandum.* Cp. on § 90.

de foro atque adeo de civitate, 'from the legal profession, ay, and from public life itself.' *Atque adeo* occurs again, § 172. Cp. *Verr.* ii. 3, *adducitur atque adeo attrahitur; pro Rosc. Am.* § 29, *Hoc consilio atque adeo hac amentia impulsi;*

ibid. § 113, *is inter honestos homines atque adeo inter vivos numerabitur.* Cp. the use of *adeo* in Tacitus, *e.g. Hist.* i. 9: *Dial.* 3, 15.

§ **80. quorum iudicium ac potestas est,** 'to whom belongs the prerogative of judgment.'

At tum si dicerem non audirer. 'But if I had been speaking then, I should not have been listened to.' This use of the imperfect is common (§ 105); Roby, 1530 c., 'of a continuous state supposed, contrary to the fact, to have existed in past time'; Madvig, 347 b. Obs. 2, 'when one may imagine a repetition of the thing asserted (*e.g.* in attempts) or a continuing state.' Similarly *Phil.* 8, 4, *Num igitur Opimium, si tum esses* ('suppose you had lived at that time'), *temerarium civem aut crudelem putares? pro Rab. Perd.* § 15. *Sed moreretur prius acerbissima morte miliens C. Gracchus quam in eius contione carnufex consisteret: Tusc.* i. § 90.

non quod alia res esset: 'not that the case was different,' subjunctive of the untrue reason, Roby, 1744.

XXX. **Id adeo.** For this use of *adeo,* emphasising the pronoun, cp. *Caec.* § 87, *Id adeo sic considerate;* and similarly, *Verr.* iii. § 120: iv. §§ 141, 143: v. § 9.

auderet, 'would have dared.' See on *dicerem* above: so *posset* and *liceret* in what follows.

nocentem condemnatum esse, tr. 'was justly convicted.'

duobus proximis praeiudiciis, 'two previous verdicts of quite recent date.'

§ **81. veritatis disceptatione,** 'the deliberate discussion of the facts.' So *iuris disceptatio, Milo,* § 23.

ea quaeritur. For the emphatic position of *ea,* cp. *vos quaeso ... audiatis,* § 66.

condemnatum, sc. *duobus proximis praeiudiciis:* cp. § 49.

ut ne eripi quidem pecunia posset. A note by the reviewer of my Translation in the *New York Nation* (26th Dec. 1896) has led me to reconsider this passage. It would be quite possible to render 'so that not even bribery would have saved him,' taking *quidem* as qualifying not *eripi* only, but the whole phrase: cp. § 107, *ne is quidem absolvit;* Tac. *Germ.* 16, 2, *ne pati quidem inter se iunctas sedes.* But after all *eripi* is the important word. The prosecutor says, firstly, 'My case carried conviction with it: there was no need for me to bribe,' and secondly, 'Oppianicus was (practically) a convicted criminal when he came into court:

why, it would have been beyond the power of bribery even to baulk justice of her lawful prey'—lit. 'so that bribery couldn't have *torn him from us.*" So Mr. Faussett: "*ne eripi quidem pecunia posset* (*nedum ut damnaretur pecunia esset adhibenda*). Bribery was powerless to avert a conviction—much less was it needed to procure one." The objection that this statement would never have been made by a prosecutor who is trying to saddle the defence with the bribery scandal, and that it voids the (imaginary) argument of the defendant when he follows with the admission that he had, unlike the prosecutor, every motive to bribe, is apparent rather than real. There is no ground for the inference that the defendant, according to the prosecutor's own showing, attempted an impossibility. What the prosecutor says is that Oppianicus's guilt was so manifest that bribery would have been of no avail—*as it seemed to him*—even to avert a conviction. But for all that the defence, it is alleged, made the attempt.

The reviewer's suggestion that *pecunia* is nominative cannot stand 'so that a bribe couldn't have been wrung out of me': the subject of *posset* is identical with the subject of *absolutus fuisset*, *i.e.* Oppianicus.

absolutus fuisset ... maneret. The imperfect denotes continuing time, whereas the pluperfect refers to past time. Cf. on § 63, *fuisset ... esset.*

ipsam, 'taken by itself': see on *ipsum nomen*, § 12. The many charges were enough in themselves to fill me with apprehension. Even Oppianicus felt that the prosecution had no need to resort to bribery, *ut nihil opus esset pecunia*, above.—The reading given in the text is that of ST: most codd. have *multitudinem et atrocitatem criminum.* But the other order is more Ciceronian: cp. § 95, *clarissimi viri atque amplissimi* ST, where there is a similar discrepancy, most codd. giving *clar. atque ampl. viri*: also *mores eius et arrogantiam*, § 111.

conscientiam mei sceleris. Cp. note on § 25.

unius iudicii periculo contineretur, 'was entirely dependent on the issue of a single trial.' For *periculum*, see on § 18.

§ 82. Age, a "fossilised imperative," found often even in combination with a plural. Strengthened by *vero*, § 197. So in early Latin, Plaut. *Cas.* 488, *Age modo fabricamini.*

profectio ipsius pecuniae = *unde profecta sit pecunia.*

Confecit tabulas diligentissime, 'has kept his account books with the most scrupulous care.' The argument is that the disbursement of so large a sum as 640,000 sesterces (about

£5440), could hardly have been concealed under the head of ordinary expenditure. A Roman *paterfamilias* was expected to keep his accounts in a business-like way: *de Or.* ii. § 97.

Anni sunt octo. 'For eight whole years you have been engaged over your case': cp. *il y a huit ans que*, §§ 28, 72. *Versatur* of action continued into present time, as often with *iam, iam dudum:* so *agitatis, tractatis, inquiritis*, 'ferreting out, turning over, scrutinising.' *Agitare* in this sense involves a metaphor from the chase: cp. *de Off.* iii. § 68, *tendere plagas etiam si excitaturus non sis nec agitaturus.* Cp. *exagitabantur*, § 101.

cum interea, 'and all the time.' *Cum* is strongly adversative here: *Verr.* ii. 5, § 162, *caedebatur virgis ... cum interea nullus gemitus ... audiebatur*: *Rosc.* § 11, *longo intervallo iudicium constituitur ... cum interea caedes indignissimae maximaeque factae sunt: prov. Cons.* § 5: *Verr. A. P.* § 16. Roby, 1733.

Quid? See on § 70.

odoranda. Cp. *quodam odore suspicionis*, § 73: *Verr.* iv. 31, *canes venaticos diceres, ita odorabantur omnia et pervestigabant.* The figure implies a contrast between hounds following the scent, noses down, and running straight up to the wild beast's lair.

vobis ducibus, 'under your guidance'—the guidance, namely, of the 'other side,' as is evident from the context, which is a sustained dialogue between Cicero and his antagonists. If we accept *vobis iudicibus*, the reading of ST (cp. § 12, where S gives *iudicabitis* for *ducetis*), the interpretation must be similar: Cicero is challenging the prosecution for a judgment on the facts, cp. § 134, *illis ipsis iudicibus.* Dr. Reid compares also the *te iudice* addressed to the opposing counsel in *Caecin.* § 38: *ib.* § 48, *de vi te ipsum habebo iudicem.*

Quid vultis amplius? On the explanation given above, these words are still addressed to the prosecution. Elsewhere (*e.g. Sext. Rosc.* § 32), they are addressed to the jury, who have to give a decision.

§ 83. At enim: ἀλλὰ ... γάρ. So § 97: *at*, § 113.

cum ... iretur, cum ... mittebant. It would be possible to refine overmuch on the difference between subjunctive and indicative here. Something must be allowed to the natural desire for variety: cp. *in quemquam* and *Fidiculanio*, § 113. But in *cum ... mittebant* (= *eo tempore quo mittebant*), there seems to be a certain emphasis which does not belong to *cum ... iretur.* It was Cannutius who was responsible for getting

the hearing closed: § 73, *Cannutio ... placuit repente pronuntiari* DIXERUNT. Cicero asks how it was that Cluentius and Cannutius, (if it was they who bribed,) allowed Staienus to be away whem the time for consultation arrived (*cum in consilium iretur*): and more definitely still how it came about that at the very moment when they had the proceedings closed (*cum in consilium mittebant*), they failed to insist on the presence of the absent juror, leaving it to Oppianicus and Quinctius to do so.

cui quod tu dicis. On the strength of the reading of s (*cui quod*), I have ventured on this emendation of the text: *tu dicis* may easily have got mixed up with *iudicem* preceding *cui*. [Cp. § 65, where, owing to a similar error, ST agree to omit *datam post iudicium.*] The singular is quite appropriate after the interpellation *At enim Staienus* at the beginning of the section: cp. *Tene hoc dicere,* § 84: *ut tu dicis,* § 87. But there is something awkward about the three-fold repetition of *cum in consilium iretur, cum in consilium mittebant,* and *ne in consilium iretur.* It looks as if *cum in consilium mittebant* and *Staienum* have crept in from the margin, and perhaps what Cicero wrote was, *Cur iudicem cui quod tu dicis pecuniam dederant non requirebant?* On the other hand, Hartman would altogether omit the words *qui* (*cui*) *pecuniam dederant,* and read simply *cur Staienum iudicem non requirebant?*

Hanc enim. 'Yes, for,' etc.

istinc ... hinc. Note the elaborate chiasmus. Cp. § 101.

patimini: imperative, as at § 200.

XXXI. **§ 84. ad conciliationem gratiae,** 'for the purpose of making up the quarrel.' Cp. the phrase *redire in gratiam cum aliquo;* and § 101, *reges a se in gratiam esse reductos.*

Tene hoc dicere, infinitive of exclamation (§ 15), 'To think that you.' Cp. Verg. *Aen.* i. 37, *mene incepto desistere;* Plin. *Ep.* iv. 3, 5, *Hominemne Romanum tam Graece loqui.*

dicunt, of a common saying. See Hesiod, *Works and Days,* 293 *sqq.*

quod opus sit, tr., 'the appropriate idea.'

ipsi, dative of personal interest: cp. the phrase, *ei ad pedes me abieci.*

alterius bene inventis, 'his neighbour's happy thoughts.'

tum recenti re, as § 36. Cp. *recentem tum,* § 79. Here *tum* is resumed by *cum faucibus premeretur,* 'when they had him by the throat.' *Faucibus* is the ablative of the part affected: cp. *captus oculis.*

sive, 'or if you like to put it this way.' This use of a single *sive* is found also in Lucretius and Tacitus. It is pretty common in Cicero: *Sulla*, § 17, *erecto sive emisso.*

istam dedit conciliationis et gratiae fabulam, 'trumped up that story of compromise and reconciliation.' These words, omitted in ST, and also in one of the Palatine codd., have been rejected by most editors. But though they savour distinctly of repetition, they are not of the stuff of which adscripts are made. A verb of some kind seems to be required after *sive ... admonitus*, and the phrase used here suitably anticipates § 86, *illud quod tum explosum atque eiectum est.* For *dare fabulam*, in this sense (instead of 'to put a farce upon the stage') Dr. Reid compares *Tusc.* i. 3, where the words are used of the author: he therefore thinks that they "may well apply to him who brought the present farce before the public, although he had borrowed the idea." *Conciliationis et gratiae* has been attacked, Müller omitting the *et*, and Dr. Reid suggesting *conciliatae gratiae*: but there is something contemptuous in the repetition of the words used by Accius, which Cicero is, as it were, pillorying. Cp. *haec illius reconciliatio*, § 101.

hominum sermonem, 'what people said': so *hominum fama*, § 12. The recurrence of *homines ... hominum ... hominem* is again noticeable: cp. § 79.

§ 85. clam atque extra ordinem, 'secretly and irregularly.'

videtur ... voluisse, 'his object was, I presume.'

adversarium, probably in the contest for the aedileship, § 69.

§ 86. cum re premeretur, lit. 'being hard pressed by the fact,' tr. 'in his desperate plight.' With *re* (abl. instr.) contrast *cum faucibus premeretur*, § 84.

quodcumque diceret honestius diceret, really a conditional sentence like *quemcumque rogaveris, hoc respondebit*, § 90: for the tense see on § 80.

explosum et eiectum est, 'was hissed and hooted off the stage.'

[qui cum matre ?] These words (omitted from the text) are very probably an adscript, or rather the remains of an adscript. There is no further reference to Sassia, and Cicero goes on at once to speak of *reus et accusator*, which connects immediately with *cum Oppianico Cluentius.* Sassia's relentless hatred might well occur to a copyist (if not to the speaker himself at this point), as an obstacle to the reconciliation of Cluentius with Oppianicus. But in any case the reading of STF

(*qui cum matre habebat simultates*) is deplorably weak; if *qui cum matre* is genuine, the addition probably originated in a misunderstanding of *qui.*

sine ignominia calumniae, 'without being branded as a false accuser.'

§ 87. An (*pecuniam dedit*) **ut praevaricaretur?** 'Or was his object to get the prosecution to play into his hands?' See on § 58. *An* introduces the alternative to § 84, *ad conciliationem gratiae.* The subject of *praevaricaretur* (*i.e.* Cluentius) is readily supplied from the previous sentence. It may be noted that Cicero has no words of reprobation for conduct which to our ideas is quite as scandalous and disreputable as a direct attempt to bribe the bench.

Iam id quoque, etc. Baiter altered *Iam* to *Nam,* and recent editors have followed him. But cp. § 97, *At hoc obfuit ei maxime. Iam ista divinatio est.* Also ch. xxi. *ad init.*

sequestre. See on § 25.

ab utroque alienissimum, 'who was quite a stranger to both parties'—in chiastic contrast with *amicum necessariumque communem.*

ageretur, dubitative subjunctive referring to past time: see on *rescinderent,* § 60.

quadraginta istorum accessio milium: 'the addition of that forty-thousand,' *i.e.* to the round sum of six hundred thousand: tr., 'the odd forty thousand.'

discribere, 'distribute.' *Describere,* the reading of the MSS., could only mean to 'mark out.'

§ 88. iudicia, 'verdicts.'

omnino, with the negative *numquam*: so *omnino non,* § 91.

suo nomine, 'directly': cp. *nomine iudicii Safiniani,* § 99. *Nomen* was used in commercial phraseology of the debtor's name entered in his creditor's ledger: hence such phrases as *nomina exigere,* tr. 'call in one's debts.'

ita ... ut. See on § 49.

ad omnia. The context shows that the reference is general, 'I have fortified myself for every issue.' Others explain *ad omnia,* sc. *iudicia.*

ruinae, 'a landslip.'

disceptationi, 'a formal discussion': cp. *veritatis disceptatione,* § 81. Cp. on § 90.

§ **89. quod ... faciatis,** subjunctive of untrue or rejected reason.

XXXIII. **si placet,** 'please': tr. 'Be good enough to add,' etc.

tum ... cum esset. Some difference must exist between the subjunctive here and the indicative in *quo tempore ... licebat* below: tr. 'he was convicted even then, presiding judge though he was.' Cp. § 83.

iudex quaestionis: cp. *quaesitor,* § 55, sometimes *quaesitor iudicii.* He was not a magistrate in the sense that he derived his authority from the people: certainly in the *quaestio de sicariis* he was nominated by the praetor who granted the trial. The office—practically a judgeship—belonged to the regular circle of Roman magistracies (§ 148), ranking somewhat below the praetorship. Cp. *Brutus,* § 264, *Is cum post curulem aedilitatem iudex quaestionis esset est mortuus.*

Non modo for *non modo non,* as § 9, § 68, § 93. Tr. "So far was the tribune from allowing any grace in the action that he did not even defer to the provisions of the law." Quinctius neither granted the ordinary 'respite' allowed a defendant to prepare his case (said to have been generally ten days), nor did he observe the law which forbade a magistrate (if the *iudices quaestionis* ranked as such) being brought to trial during his year of office. Quinctius, in fact, *pressed* on the action, and *strained* the law. His conduct, far from being *merciful,* was not even *just* or *legitimate.*

quo tempore ... eo tempore. Cp. note on *causam ... in qua causa,* § 49. So § 104, *Qua lege ... ea lege.*

vultus enim vestri: 'I ask, because.' Cp. § 70.

invitant ut ... libeat, 'give me such encouragement that I am minded.' There is a great appearance of candour about this sentence.

§ **90. illa,** attracted from *illud*: cp. on *haec,* § 34. With *quaestio ... disceptatio ... iudicium,* cp. *Sest.,* § 40, *nec mihi ille iudicium populi nec legitimam aliquam contentionem nec disceptationem aut causae dictionem, sed vim, arma, exercitus, imperatores, castra denuntiabat.*

Putabo fuisse, *i.e.* 'I shall suppose it was a fair trial,' by whatever name you like to call it, *quaestio, disceptatio,* or *iudicium.*

de illo populo. For this use of *de,* cp. § 157, *Quis de plebe Romana?*

innocentem circumvenerit, 'compassed the ruin of an innocent man.' So §§ 9, 30, 151.

hac lege, viz. the *Lex Cornelia de sicariis et veneficis.* This may be taken as proof that Cluentius, though an *eques,* was accused not only of poisoning, but also under that section of the *Lex Cornelia* which related to conspiracy and judicial murder, and which was technically applicable only to senators. See Introd., p. xxxiii.

accusatum oportuit. For the constr., see on § 129, where the protasis also is in the indicative. With *esset ... oportuit,* cp. *Mil.* § 31, *Quod si ita putasset, certe optabilius Miloni fuit dare iugulum P. Clodio.*

quaerebat, *i.e.* 'was acting as judge' (*iudex quaestionis*).

expectasset, resumes *oportuit,* but not being an impersonal verb (cp. *opus erat*) passes more naturally into the subjunctive. This example supports Dr. Reid's view (note on *pro Sulla,* § 25) that such subjunctives are parts of elliptic propositions, where the protasis is unexpressed. Cp. *restitisses, Sest.* § 45. Tr. 'ought to have waited.' Roby, § 1604.

potestate, sc. *tribunicia*: § 79. Opposed to *privatus* in what goes before, just as *in tempore* is opposed to *sedata iam invidia.*

§ 91. quod ... in legem non iurasset. The *iudex quaestionis* had to take an oath, within five days of his assumption of office, that he would administer justice according to the law by which the court over which he presided was constituted.

homo sanctus et diligens, 'that highly moral and conscientious person,' in ironical contrast with *interlitus* ('full of erasures') below. Cp. *homo castissimus, Verr.* ii. 1. 100.

subsortitionem eius, lit. 'the filling-up of vacancies by Junius.' Tr. 'had no note of the appointments made by Junius to vacancies in the panel of jurors.' The process of *subsortitio* (supplementary to the original *sortitio*) was conducted in each case by the *iudex quaestionis* with the authority of the city praetor (cp. on § 103). I transcribe the following note from my *Translation,* p. 140: "Sometimes it was the challenging (*reiectio*) of prosecutor and defendant that had brought down the jury below its proper number; but in the trial of Oppianicus some other cause had probably intervened not long before the end of the case. Junius was charged with having chosen Fidiculanius out of the regular order (§ 103); and he was suspected generally of having selected such persons as would be ready to vote for the conviction of Oppianicus (§ 113). Verrès had either not been

consulted at all in the matter, or else disowned the proceeding, nor was there any entry in his books regarding it; and as the newly-appointed jurors seem all to have voted against Oppianicus, it was held probable that they as well as Junius had been bribed by his accuser. In his impeachment of Verres (ii. 1, § 158) Cicero directly accuses him of having been in league with Junius, and says that, fearing to suffer his fate, he afterwards falsified his official lists. Here he seems only to insinuate that the fact that no note of the *subsortitio* could be found in his books, was not to be wondered at considering the kind of man he was."

XXXIV. **§ 92. Si ex lege subsortitus non erat Iunius**: 'if Junius had violated the statute in his appointments to vacancies.' Lambinus proposed to insert *iudicem* after *subsortitus*: cp. § 96.

aliquam ... aliquando, contemptuous. Official oaths, Cicero means to indicate, have a tendency to become merely formal.

Non. The negative by itself, without a verb, is more or less colloquial, and seldom occurs in classical prose. Mr. Faussett cites *Caec.* § 33, *Quid? hoc Verre praetore factum est solum? Non, sed etiam quaestore Caecilio.*

commiserat, absolute, 'had committed an offence.' So *pro Rosc. Am.* § 57, *Verr.* i. § 110.

illud iudicium fuisse, 'that the trial of Junius was a fair trial.'

defendere, frequent for to 'maintain.'

illud iudicium, *i.e.* the trial of Oppianicus before Junius.

ratio illius iudicii, 'the motive of his (Junius's) trial': cp. ἡ τοῦ ἀγῶνος προαίρεσις in Demosthenes, and *ratio accusationis*, § 19, where, however, see note.

Non opinor, etc. 'Nothing, in my judgment, of what was then done (*i.e.* no essential feature of the case) can possibly have undergone a change.' These words give Cicero's own reply to the question just put: cp. *mutari* with *mutata est*, and *alia nunc ac tum.* Any change that had taken place, he goes on to say, related not to the 'merits' but to the 'surrounding circumstances.' Cp. § 80 of Cluentius's case: *causa enim manet eadem quae mutari nullo modo potest, temporis iniquitas atque invidia recessit.*

§ 93. populariter: cp. *homo maxime popularis*, § 77: *popularis homo ac turbulentus*, § 94. Tr. 'public meetings worked upon day after day by the arts of the agitator and the demagogue.'

Accusabat tribunus plebis, etc. 'The prosecutor was a tribune of the people,—whether on the platform or before the court a tribune still': or 'the person—a tribune of the people—who denounced Junius on the platform also appeared to prosecute him in court.'

Gradus illi (deictic) **Aurelii,** 'yonder Aurelian staircase.' This staircase led up to the Tribunal Aurelium (*Sest.* § 34) near the temple of Castor in the Forum. *Tum novi* seems to justify the supposition that it was erected by M. Aurelius Cotta, who was consul in B.C. 74, the very year in which Junius was tried.

ab reo, 'on the side of the defendant.' See on *a Cluentio*, § 9. For the agitation against the senatorial monopoly of the *iudicia,* see Introd. p. xxviii.

§ 94. collegam meum, *i.e.* in the praetorship (B.C. 66). In § 147 we are told that Orchivius presided over the *quaestio de peculatu,* Cicero over that *de pecuniis repetundis.*

locus ... non est constitutus, *i.e.* the jury refused to place the action against Sulla on the roll for trial. Cp. § 56, *utique ei locus primus constitueretur propter causae coniunctionem impetravit*: § 59.

de pecuniis residuis. The action was for 'the recovery of sums remaining in the hands of' Faustus Sulla, who was charged, therefore, with unlawfully detaining the surplus of an appropriation of public money. The reaction against the Sullan constitution had culminated in B.C. 70, the year of the consulship of Pompey and Crassus: and the attack on the dictator's son would be carried on with special zest by the tribunes whose powers Sulla had for a time curtailed (§ 110).

non quo ... sed quod: subjunctive of rejected reason, with corresponding affirmative in the indicative (*putarent—non putarunt*).

exlegem, 'beyond the reach of the law.'

contemptam atque abiectam. So *hominem contemptum abiectum, Leg. Agr.* ii. § 93. Where a verbal adjective in *-ilis, -bilis* is wanting, its place is often taken by the perfect participle passive. So *contemptus* here = not 'despised' but 'despicable': *de Am.* § 32, *rem tam humilem tamque contemptam*: *Phil.* ii. § 2, *Quid putem? contemptumne me?* So especially in compounds with *in*: e.g. *invictus, indomitus, inaccessus,* and others. Nägelsbach[8], § 72 *b*, p. 270.

cognatis, adfinibus, necessariis, 'kinsmen, connections, intimate friends.' There is a well-defined difference between

cognatus, 'a relative by blood,' and *adfinis*, 'a connection by marriage.' *Necessarius* is used here in the general sense which it bears in §§ 43, 87: sometimes however it implies relationship. The ablatives are all descriptive.

quaesita. Cp. *quaeretur*, § 70.

prudens. I doubt if there is sufficient reason for altering the reading of all the MSS. here to *pudens* ('unassuming') on the ground that the latter epithet gives a better antithesis to *criminosus* ('scurrilous') and seems generally more appropriate, especially alongside of *modestus*. The two words were constantly confounded, however, by copyists. Cf. § 144.

pacatum. Mr. Faussett supports *placatum*, the reading of ST, by reference to *Post Red. ad Q.* § 2, *si mihi tranquilla et placata omnia fuissent*: cp. 138 below *populum Romanum sua sponte esse placatum*. But it is equally apposite to cite such phrases as *in pacatis tranquillisque civitatibus, de Or.* i. § 30.

in Fausto, 'in the case of Faustus.' Cp. on *in Bulbo*, § 78.

summa vis potestatis. Cp. on *summa potestate praeditus*, § 79.

XXXV. **§ 95. rationem**, 'consideration,' direct acc. after *cogitare*, while the dependent clause *quid mali ... vis tribunicia* depends rather on *perspicere*.

conflata praesertim invidia, 'especially in a blaze of strong popular feeling.'

contionibus seditiose concitatis: so § 2. Cp. § 93 above.

non iactatione populari, 'not by posing as popular leaders.' Mr. Faussett compares Sest. § 114, *ita se in populari ratione iactarat*, 'had given himself such airs as a democrat': Juv. i. 62.

P. Popilius Laenas (consul in B.C. 132) prosecuted with great severity those who had aided Tiberius Gracchus, and was compelled by Gaius Gracchus, when tribune in B.C. 123, to go into exile. After Gracchus's death he was recalled (*Brutus* § 128). It is noticeable that the MSS. give the name wrongly: *L. Popilius* ST, *C. Popilius* ω. The correct name is found in *Brutus* l.c., and also in Quint. v. 10, 108. I am inclined to think that the source of the confusion in such cases is that in the archetype the letter P was made to do double duty: e.g. *Popilius* for *P. Popilius*: cp. § 23, *Aurius* for *A. Aurius*: also § 24.

Q. Caecilius Metellus Numidicus. This was the Metellus (father of Metellus Pius, § 24) who preferred exile to the

indignity of being forced to take the oath by which the demagogue Saturninus, who was countenanced by Marius, sought to secure the ratification of an agrarian law which he had proposed to the senate (B.C. 100).

nedum: in Cicero only, as here, after negative sentences. So once in Terence, *Heaut.* 454, *Satrapa numquam sufferre eius sumptus queat, nedum tu possis.*

his moribus, 'with the existing state of society.' Cp. *Quinct.* §§ 59, 93: *ad. Q.F.* i. 1, 3, 11.

ac sine: for the emphatic repetition of the preposition, see on § 3 *ad fin.*

§ 96. illud iudicium, 'the trial of Junius.'

non fuit ... non fuit. An instance of *Epanalepsis* (§ 42): cp. *pro Mil.* § 21, *Non fuit ea causa, iudices, profecto, non fuit*: *Verr.* i. § 10.

non modus ullus: cp. *non mulieris modus*, § 191.

mos consuetudoque, 'traditional usage.' For the double expression see on § 13.

vis illa fuit. For the attraction see on *haec*, § 34.

illud iudicium fuisse, 'that it was a regular trial.'

his rebus iudicatis standum, *i.e.* 'that the verdict then given ought to be maintained.' So §§ 122, 132. Cp. § 114, *tu cuius accusatio rebus iudicatis niti videbatur.*

ab illa, 'from that of Junius.'

ab illo, 'from Junius.'

iudicem has been suspected (by Garatoni and Baiter) owing to the occurrence of the plural (*subsortitio iudicum*) in *Verr.* i. § 157. Falcula may have been the only juror introduced into the *consilium* by *subsortitio* (see on § 91): otherwise the singular is possibly generic, as *Flacc.* § 18, *non iam est mihi contentio cum teste*, 'with witnesses.'

Cluenti ratio, 'the case of Cluentius.'

maiestatis, sc. *laesae* or *minutae*, 'high treason.' A similar genitive occurs in § 32. For the definition of *maiestas* see *de Inv.* ii. § 17, *maiestatem minuere est de dignitate aut amplitudine aut potestate populi aut eorum quibus populus potestatem dederit aliquid derogare.*

§ 97. hoc iudicium cum illo non esse coniunctum, 'that this trial (*i.e.* the trial of Bulbus: so § 98, *hoc Bulbi iudicium*) had nothing to do with the trial of Oppianicus.' This is probably the meaning: compare the form of the sentence at the end of § 98. On the other hand we might take *hoc*

iudicium, of the present trial, *i.e.* the trial of Cluentius, and *illo*, of the trial of Bulbus: cp. § 96 above, *hanc causam ab illa debet seiungere.*

hoc ... crimen, *i.e.* his corrupt conduct at the trial of Oppianicus was made a charge against him. So again below, *At hoc obfuit ei maxime*, 'but still it told heavily against him.'

lege ... tenebatur, *i.e.* was included under the statute. Cp. § 20, *cum res ... oculis ac manibus teneretur.* So often of an accused person, *lege haerebat.*

ista divinatio est, 'this is mere guess-work': cp. § 131. For the attraction, cp. *vis illa fuit*, § 96: and see on § 34.

vide ne, lit. 'see to it, lest': tr. 'you will perhaps find my inference nearer the mark.' For *coniectura*, see on § 20.

mihi, ethic dative: § 114, *Quid enim mihi damnatos ambitus colligitis?* Cp. *Verr.* iii. § 213, *Tu mihi Antonii exemplo istius audaciam defendis?*

XXXVI. **§ 98. P. Popili:** not the same person as the Popilius of § 95.

qui causam de ambitu dixerunt,* qui accusati sunt ab eis qui erant ipsi ambitus condemnati. This is the reading of all the MSS., but it is impossible to believe that Cicero is responsible for so awkward and clumsy a sentence. Not only is the recurrence of *qui* three successive times intolerably harsh (especially with *quos* immediately following), but there is also a tautology in *qui causam ... dixerunt, qui accusati sunt*: instead of which Cicero would surely have written *qui accusati sunt de ambitu ab eis qui*, etc. Mr. Lendrum (*Hermathena*, vi. p. 358) takes the second *qui* (before *accusati sunt*) as an instance of the use of a relative to introduce a refutation: cp. *Phil.* ii. § 14, *cuius etiam familiares*, etc., § 27 and § 71. The late Professor Nettleship proposed to read *quia*, explaining *qui causam de ambitu dixerunt* [*non de iudicio corrupto*] *quia accusati sunt*, etc.: cp. *Quint.* v. 10, 108, where Quintilian takes the restoration to civil privileges (*in integrum restitutos*) of the prosecutors in this suit, who had themselves been convicted of *ambitus*, as the *signum* that Popilius and Gutta were prosecuted for *ambitus* and not for judicial corruption. But, on this view, *quia* would certainly be more in place if instead of *qui causam de ambitu dixerunt* some such clause as *quos causam de ambitu dixisse constat* had preceded it. I have ventured to place a full stop at *dixerunt*, and to read in what follows **Quid? Accusati sunt.** Accius had argued that the judgment against Popilius and Gutta, brought to trial on a charge of *ambitus* ('corrupt electioneering practices,') was really due to their conduct at the trial of Oppianicus. Cicero replies

that they were actually guilty of the misdemeanour for which they were impeached, namely *ambitus*; and to prove his statement he cites the fact that their accusers had themselves been convicted of *ambitus*, and had therefore got the advantage of that part of the statute which enacted that any who had been so convicted could secure the restitution of his rights by conducting a successful prosecution for the same offence. Cicero finds it convenient to ignore the fact (see Introd. p. xxxvii.) that while an accused person might be prosecuted under one statute, offences against another statute might be used to secure his conviction.

quos ego non idcirco, etc. This shows that *ambitus*, which is specially used of giving money to obtain public office, did not include the taking of a bribe by a juror: that offence came properly under the statute *de Repetundis* or the *Lex Cornelia de Sicariis* (cp. notes on §§ 114, 147, 148), neither of which offered the *praemia* referred to in what follows. There may have been some technical reason which saved Popilius and Gutta from being impeached under either of these laws. The limitations of that section of the *Lex Cornelia* which treated of 'judicial circumvention' are detailed in chap. liv.; and from § 104 (*qua lege in eo genere* a senatore *ratio repeti solet*) it would appear that there were similar restrictions to the operation of that part of the statute *de Repetundis* which seems to have dealt with corruption on the part of jurors.

in integrum restitutos, 'restored to their civil rights,' the *praemia legis* mentioned below. Mr. Faussett cites Modestinus, a jurist of the 3rd century (in *Digest.* 48. 14. 2), of the *Lex Julia de ambitu* (B.C. 18), *qua lege damnatus, si alium convicerit, in integrum restituitur*: *non tamen pecuniam recipit.* The *Lex Calpurnia,* of B.C. 67, must have done away with the arrangement, which seems to have been re-embodied in the *Lex Julia*: it carried the penalty (besides a fine) of perpetual exclusion from the senate and from public office. This *Lex* was in force at the date of the speech *pro Cluentio*, but the case to which Cicero refers must have occurred before the *Lex Calpurnia* was introduced.

cum in eodem genere, etc., 'having brought others to account for the same misdemeanour as that of which they had been themselves convicted.' *Reprehendere* means to 'rebuke by bringing to trial,' to 'pull up,' 'bring to book.' Prof. Nettleship cites *pro Font.* § 3, *accusatos et reprehensos ... testibus*: cp. *Cluent.* § 119 and (of criticism) *Brut.* § 236 *in reprehendendis verbis versutum et sollers.* For *offendere*, 'to come to grief,' cp. on § 63.

§ 99. Quid, quod, elliptical for *Quid de eo dicam quod?*

Non dico. 'Omission' (*praeteritio, occultatio*) is a well-known figure in rhetoric, when the speaker contrives to say exactly what he professes to leave unsaid: cp. § 188. *Ad Herenn.* iv. 37, *cum dicimus nos praeterire aut non scire aut nolle dicere id quod nunc maxime dicimus.*

id quod nescio an dici oporteat, etc., 'though I almost think I should say it.' The affirmative force of this and other similar phrases begins to be noticed first in Cicero: in earlier Latin they are still dubitative.

M. Aemilio: the dative is quite usual with *legatus.* The person referred to is M. Aemilius Mamercus Lepidus, consul B.C. 77, and proconsul in Italy in the year following, with Staienus as his quaestor. Many editors (against all the MSS.) read Mam. Aemilio, on the ground that Cicero would have been careful to discriminate between this person and the M. Aemilius Lepidus who in B.C. 77, the year after his consulship, headed an insurrection against the senatorial government as restored by Sulla.

praefecti, sc. *socium,* Roman officers commanding the contingents of the allies.

conflatam. See on § 18.

nomine, 'on account of,' 'on the head of,' originally a book-keeping term. See on *suo nomine,* § 88, and cp. §§ 115, 120. For the action raised by Safinius Atella, see § 68.

§ 100. illo iudicio. The tendency to omit *in* with the ablative of place, where an adjective or even a pronoun occurs along with it (cp. *uno iudicio,* § 103) becomes more marked in Livy and in later Latin, though it is never infrequent with such words as *totus, cunctus, omnis* and *medius.* Where there is no attribute the ablative without *in* occurs only in proper names and such phraseological expressions as *terra, mari, dextra, loco.*—In the text the occurrence of *in Staienum* immediately afterwards is enough to account for Cicero's preference for the ablative without *in*: contrast § 103 *in illo iudicio invidiosissimum*: also *quibus in iudiciis,* § 62.

P. Cominius is thus referred to in *Brutus,* § 271, *P. Cominium Spoletinum, quo accusante defendi C. Cornelium.* Asconius mentions his speech for the prosecution as well worth reading, *propter semet ipsam.*

disertis, 'clever speakers.' For the difference between *disertus* and *eloquens,* cp. *Or.* § 18, where Cicero quotes Antonius, *disertos ait se vidisse multos, eloquentem omnino neminem*: *de Or.* i., § 94. Cp. § 156.

conciliandae gratiae: § 84.

accepisse dicebat. In many MSS. *se* occurs before *accepisse.* Its omission (ST) seems quite natural in view of the occurrence of *Staienum* in the previous clause: for the construction, cp. on § 36, *posse arbitrati sunt.* Similarly at § 176, all codd. give *quaesituram esse dixit*: § 162, *Primo debere negavit*: cp. § 140, *posset negare dixisse* ST, *se negare* ω. For the tendency to omit *se*, cp. § 43, where T gives *quod non suis commodis*: § 141, *eas se tamen* ω, *eas tamen* ST: § 149, *se re ipsa* ω, *re ipsa* ST: § 201, *se ... lugere simulasset* ω, *se* om. ST.

§ 101. haec illius reconciliatio: cp. the contemptuous *istam dedit conciliationis et gratiae fabulam*, § 84, *ad fin.*

persona viri boni suscepta, 'his assumption of the *rôle* of an honest man.' For *persona*, cp. on § 78.

in statuis inauratis, 'in the matter of the gilt statues.' For this use of *in* with abl. see on §§ 13, 32.

ad Iuturnae, sc. *templum.* Juturna was a goddess of springs and fountains, known to readers of the *Aeneid* as the sister of Turnus.

in gratiam esse reductos, *i.e.* had been restored to friendship with Rome.

exagitabantur. So *agitare*, § 82.

in eius modi ratione, *i.e.* so disreputably, the reference in *ratio* being to his methods: cp. *qui esset totus ex fraude et mendacio factus*, § 72.

quaestus forensis. Cp. *quaestu iudiciario*, § 72.

in medium. See on § 77. The phrase *in medium proferre* is of frequent occurrence in Cicero: *e.g. in Verr.* iv., § 115: *de Fin.* ii., § 76.

interpres, 'negotiator': cp. *Verr.* i., § 36, *qui sequestres aut interpretes corrumpendi iudicii solent esse.* Cp. on *sequester*, § 25.

non ... probabatur, 'was not considered satisfactory.' Cp. § 61, *non probabatur*, 'it did not appear probable.' Similarly § 138 (*iudicia*) *quae probata non essent.* Cp. on § 52.

§ 102. Quam ob rem si Staieni damnatione, etc. The protasis extends to *ab iudice ablata est*, and consists of two parts, (1) *si ... iudicatum est*, and (2) [*et si*] *cum ita*, etc. ... *reperietur ... ablata est.* It should be noted that the parenthesis, *cum ita constitutum sit ut ... aut Oppianicus*, goes with the second part of the protasis, not with the first. Cicero carefully ignores the third alternative, viz. that both Oppianicus and Cluentius had been guilty of bribery. See Introd. pp. xxi.-xxii.

reperietur. For the future, cp. *tenebitur*, § 125.

XXXVII. § **103**. **Ergo adhuc ... video,** 'So far, then, I find,' etc. For a similar collocation, cp. *de Prov. Cons.* § 42, *Ergo adhuc magis est mihi verendum ne ...* : *pro Mil.* § 52, *Video constare adhuc, iudices, omnia.* In the latter passage *video* is followed lower down by *videamus*, as here the words *Videamus ecquod aliud iudicium ... proferre possimus* resume *Ergo adhuc ... video,* with the intention of carrying the argument a stage further. See also *pro Rosc.* §§ 92, 95.

appellet ... necesse est. The apodosis here, in the indicative, makes the assertion of the necessity of denying any connection between the trial of Junius and that of Cluentius independently of the condition.

Illud Iunianum (sc. *iudicium*), 'the trial of Junius': elsewhere (*e.g.* § 1) of the trial of Oppianicus before Junius.

C. Fidiculanius Falcula. For a discussion of this case (of which Cicero gives a quite different account in *pro Caecina*, §§ 28-9), see Intro. p. xxv.

cum praesertim with **condemnarat** (not *dixit*): 'though indeed,' 'and that although.' In such a context this phrase comes to have the force of *quamvis*, or *idque cum tamen*: see my note on *Quint.* x. 1, § 105.

ex subsortitione, 'as a substitute': see on § 91.

contionibus ... seditiosis et turbulentis, 'factious and violent harangues.' So *turbulenta contio, ad Att.* iv. 3, 4: cp. *Quint.* v. 13, 39, *Presserat enim turbulentis contionibus Cluentium Quinctius.* Mr. Faussett takes *contiones* here of 'meetings' (as §§ 2, 93, 95), and that certainly is the meaning in four other passages of this speech where *turbulenta contio* occurs. But the alternative meaning seems more appropriate here: cp. § 77, *contio vehemens et gravis*; § 127, *ut illae Quinctianae contiones habebantur.*

non suae decuriae munere, lit. 'by the duty not of his own decury' or 'section,' *i.e.* 'when the duty did not devolve on the panel to which he belonged.' For the exercise of their judicial functions the senators (who had enjoyed a monopoly of the *iudicia* from B.C. 81 to B.C. 70) seem to have been divided into as many decuries as there were *quaestiones*, and one decury may have been annually assigned to each *quaestio.* When from any reason a place or places on the bench became vacant, a *subsortitio* had to be made (from the decury proper to the *quaestio*) by the *iudex quaestionis*, on showing cause for so doing to the city praetor, and then it was open to any one interested to make objections. In this particular case the

double complaint against Junius was, as we have seen (*vide* note on § 91), that (*a*) in impanelling Fidiculanius he had made an irregular selection (as Fidiculanius did not belong to the decury which was to serve in the *quaestio de veneficiis*), and that (*b*) he had neglected to consult the city praetor, on whose register the name of Fidiculanius ought to have been entered (*a*) *non suae decuriae munere ...* (*b*) *neque ex lege*: cp. *si ex lege subsortitus non erat Iunius*, § 92. The phrase *decuriae iudicum* is said to have originated at the period when the Quaestiones Perpetuae were first established. Ten jurors seem to have been selected from each tribe, making a total of 350 liable to serve; and these formed the Album Iudicum Selectorum. After B.C. 70 each of the three classes from which the *iudices* were taken (senators, knights, and *tribuni aerarii*) formed a decury, and the Album was made up by the praetor out of these.

prima actione: see on § 55.

Non numero hanc absolutionem, 'I waive this acquittal,' 'leave it out of the reckoning.' So *ad Att.* xvi. 4. 4, *Nam Cassii classem ... non numero ultra fretum.*

ut illam multam non commiserit, 'granting that he did not incur that particular fine,' or 'did not commit the offence which would have made him liable to the fine.'

accepisse tamen ob rem iudicandam pecuniam, sicut causam pecunia **capta nusquam Staienus eadem lege dixit.** The MSS. (which coincide except that F has *captam* for *capta*) show no trace of any lacuna such as I have endeavoured to fill by the words *pecuniam sicut causam pecunia*, where indeed the first *pecuniam* might be dispensed with (except so far as it may help to explain, by the recurrence of the same word, the source of the corruption), if we understand *accepisse* as used absolutely: see § 75, § 113, and elsewhere. Cp. § 65, where owing to the recurrence of *iudicium* the essential words *datam post iudicium* are omitted in ST. The corruption may indeed extend more widely, one of the main difficulties of the passage being that the transition is nowhere indicated from the first trial of Fidiculanius to the second. *Eadem lege*, if it means 'under the same statute as Falcula on his second trial' would seem to show that this transition must already have been made in what has fallen out: the words *Fidiculanius quid fecisse dicebatur?* would then follow quite naturally. On the other hand these words may themselves form the transition, though this would have been made clearer if *Sed altero iudicio* had been prefixed, to correspond with *Uno iudicio* ten lines above.

Taking the text as I have proposed to constitute it, the general sense is clear. "I waive this acquittal," says Cicero, "for even though he had not rendered himself liable to the fine in question, it is still quite possible that he may have taken a bribe while serving as a juror, just as Staienus, though he had taken a bribe, was never impeached under the same statute (*i.e.* the statute which was applicable to Falcula's graver offence of judicial corruption and to his own: see § 104). That indictment (*crimen illud*, viz. that he had taken a bribe) could not properly be made in the court before which he was impeached (*proprium ... quaestionis eius non fuit*). But as to the facts: what was the charge made against Fidiculanius at his second trial? He was charged, directly and expressly, with having taken money from Cluentius. His acquittal is therefore very strong evidence in favour of my client."

For *eadem lege* Madvig proposed to read *ea de re lege*, a conjecture which Mr. Faussett adopts, explaining that "Staienus in his trial for *maiestas* had not to answer *directly* (*legitimo iudicio*) for corruption." Having regard to what follows (*proprium crimen*, etc.) it is rather against this emendation that we have *eadem fere lege et crimine* a few lines above. *Ea quidem lege* was suggested by Kayser. But *eadem* is probably quite sound, *sc. qua altero iudicio Fidiculanius*,—the statute, namely, described in § 104, *Qua lege in eo genere a senatore ratio repeti solet, de pecuniis repetundis.* Staienus was a senator as well as Falcula.

Other emendations are: *iudicandam pecuniam, qua capta nusquam Staienus eadem lege dixit*, Ravius, Klotz: *iudicandam pecuniam quam Staienus, qui causam nusquam eadem lege dixit*, Lambinus.

quaestionis eius. Most edd. take this sentence of Staienus, and explain *quaestio* of the court in which Staienus was tried for *maiestas.* But it is better to understand the orator as referring to Falcula. The statement, in fact, resumes *non numero hanc absolutionem*; the fact that Falcula was acquitted on the first occasion cannot benefit Cluentius, because bribery could not have formed a count in the indictment. Then follows the abrupt question: "But what of the merits? What was it that Fidiculanius was accused of (at the second trial)? Of having taken money from Cluentius."

§ 104. HS $\overline{\text{cccc}}$: 'four hundred thousand sesterces,' ten times as much as Oppianicus proposed to give each juror (§ 87). The number is probably corrupt, but we have here a hint of the real truth. The correct reading may be *HS Iↄↄ*, which would = *HS quinquaginta milium.* Oppianicus com-

missioned Staienus to offer forty thousand sesterces to sixteen jurors: Cluentius gave fifty thousand to seventeen. Cluentius was doubtless guilty of bribery as well as Oppianicus, and his success was probably owing to the fact that he offered more than his opponent. "We must contrast," says Mr. Faussett, "what Cicero said in the *pro Caec.* § 28. He is disparaging the value of Falcula's evidence. When he gave it, he was asked how many miles (*quot millia*) Caecina's farm lay from Rome; and on his replying *minus IↃↃↃ*, 'less than fifty miles,' with a roar of laughter the audience cried *ipsa esse*, 'the exact figure.' 'For they remembered,' Cicero says, 'how much he had received in the *iudicium Albinianum*.'" [The figures *IↃↃↃ* are not quite certain in *Caec.* § 28. They are due to Keller, the MSS. all (or nearly all) giving *Liii.*—J. S. R.]

in eo genere, 'under that head,' 'in that class of offences.'

de pecuniis repetundis. "This seems to imply that only senators were liable under the *Lex* [*Cornelia*] *de Repetundis* the existing statute on the matter. So also the words at the beginning of § 148, where Cicero says that if T. Accius (an *eques*, v. note on § 62) were impeached under this law, he would protest, *se lege pecuniarum repetundarum non teneri* .... But this certainly does not hold in regard to the whole *lex de repetundis* .... It is therefore not unlikely that, as Mr. Peterson conjectures (note on § 98), the application of *those sections* of the law *de repetundis* which related to judicial corruption ... was confined to senators, which would be analogous to the similar limitation in the case of the sixth chapter of the *Lex Cornelia de sicariis*."—Faussett. On this Dr. Reid remarks that "§ 148 must be read with § 145, *si senator iudicio quemquam circumvenerit*, etc. In considering liability under the *leges repetundarum*, a distinction must be drawn between the primary proceedings and the secondary (*lites aestimatae*). In connection with the latter, any one, official or not, who had corruptly touched money in conjunction with the principal culprits might be attacked when the inquiry was made *quo ea pecunia pervenerit*. This was so even under the early statutes (*Rab. Post.* §§ 8-10). The *Lex Julia* gave an enumeration of those liable under the primary proceedings: *Lex Iulia repetundarum pertinet ad eas pecunias quas quis in magistratu potestate curatione legatione vel quo alio officio munere ministeriove publico cepit, vel cum ex cohorte cuius eorum est*, Dig. xlviii. 11. 1. It is reasonable to suppose that a great deal of this was taken from the earlier statutes. *Rab. Post.* § 12, to which Faussett refers, is not so important

as § 17." See a detailed account of the *Lex Iulia de Repetundis* in Tyrrell and Purser's *Correspondence of Cicero*, vol. iii. p. 295.

honestissime: so *honeste*, § 49. Falcula left the court without a stain on his character. Cp. Liv. ix. 26. 20, *egregie absolvuntur*.

Adducti iudices sunt, etc., 'The court was brought to believe that....' *Adducti* here = *adducti ad iudicandum*, or *ut crederent*, as is quite plain from the analogous passages in *de Fin.* i. 5. 14 (where see Madvig's note), and *ad Att.* xi. 16. 2. Similar examples of brachylogy are not uncommon, especially in poetry. Cp. *de Or.* i. § 115, *ita dico ut ... possit* for *ita dico ut ... dicam posse*: Lucr. iii. 765, *Scilicet in tenero tenerascere corpore mentem Confugient.* For other exx., see note in Transl. p. 146.

constarent. There need be no difficulty about the personal construction, though Lambinus wished to read *constaret* and Müller approves, referring to *Rosc.* § 118, where *maleficiis quae in illo constat esse* is the reading now adopted. There is an analogy to the personal construction (with the infinitive) in the occurrence of a *ne* clause in *Leg. Agr.* 2, § 102, *quae timebatis ea ne accidere possent provisa sunt.* *Constarent* should be retained also in *de Dom.* § 139. The personal construction of *discrepare* in § 122 may be compared.

XXXVIII. **§ 105. imperitorum hominum rumusculos aucupati**, 'angling for the poor applause of ignorant persons'; cp. § 76 *ad fin.*, especially *sive ambitione adducti.* For *imperiti homines* cp. on § 5. *Rumusculi* is a contemptuous diminutive (Nägelsbach[8], p. 185), 'futile twaddle': cp. *Deiot.* § 33, *urbani malivolorum sermunculi.* The five jurors wanted to be talked about (cp. *hominum rumor*, § 28). *Aucupari* is a favourite figure with Cicero and Plautus: cp. *Legg.* iii. 35, *omnes rumusculos popularis aurae aucupari*; *Miles*, 995: *Rudens*, 1093.

illum, Oppianicus.

A quibus si qui quaereret, 'if you had asked them.' For the imperfect, see on § 80, *tum si dicerem non audirer*. Here the speaker passes ultimately to the pluperfect, *si essent rogati*, *quaesitum si esset.*

in C. Fabricium. For this use of *in* with acc., cp. on § 198. So *pro Rab. Post.* § 10, *in A. Gabinium iudices sedistis.*

veneni, *sc.* crimine.

una sententia, that of Staienus: § 55.

vellet, 'would have cared,' at the time of Falcula's acquittal (*tum*).

§ **106.** **redderet,** potential of past time. "Which of the two classes of jurors," Cicero asks, "(those who convicted Oppianicus and those who did not) would have been better able (in the light of Falcula's acquittal) to justify the vote they gave?"

se et sibi et rei iudicatae constitisse. Cp. § 76, *se superioribus suis iudiciis constare putabant oportere; itaque damnarunt.*

esse, *i.e.* habitually: *constitisse* in the previous clause shows that the present infinitive must have this force here. Cp. § 56, *voluit cognoscere utrum iudices ... essent severi ... an ... iudicarent.*

Quorum de sententia, etc. Cicero now begins to speak of those who did *not* vote for a conviction, having made the distinction in the previous sentence between those who did and those who did not. He has in mind therefore, at the outset of his argument, both those who acquitted and those who said *Non liquet.*

ii tales viri, 'those honourable gentlemen.' So *illis talibus viris,* § 50; *hi tales viri,* § 186: see on § 3.

suspicione. Cp. § 76, *aliqua suspicione ... adducti absolverunt.* Suspicion that there was something wrong is suggested in the same passage as the motive of those who said *Non liquet*: cp. the words *de quo orta esset suspicio pecunia oppugnatum* quoted below.

de statu suo declinarunt, 'receded from the position they had taken up.'

misericordiam: one only out of several possible motives enumerated, § 76 *ad fin.*

constantiam, 'consistency': cp. *se et sibi et rei iudicatae constitisse dicit* above. These are the *severi homines* of § 76, who acted *sua sponte,* and gave their verdict according to their consciences, though they were aware that the same verdict was being returned by others from corrupt motives (*Staieni fraude*).

eorum vero ... sapientiam. Cp. § 76, *homines sapientes et ex vetere illa disciplina iudiciorum,* where the language closely corresponds.

cum tanta ... esset iniecta. Cp. § 76, *neque eum de quo esset orta suspicio pecunia oppugnatum ... condemnare vellent.*

paulo posterius patefacta re, 'when the facts should shortly afterwards be brought to light.' Cp. § 76, *neque ... re illa* (*i.e.* the bribery rumour) *incognita primo condemnare vellent.* This passage is of importance for the analysis of the

voting at the trial of Oppianicus: see Introd. p. xxii. *sq.* The translation of the abl. abs. given above is justified by the fact that no further hearing of the case ever came on. Those who voted *Non liquet* did their best to secure an *ampliatio*, but were unsuccessful, Oppianicus being found guilty at the first hearing of the case: Cicero wishes his hearers to infer that if a second trial had been ordered they would have swelled the majority against Oppianicus by voting 'Guilty.'

§ 107. sapientes. Taken with *eorum vero qui sibi non liquere dixerunt sapientiam laudo* in the last sentence (and *homines sapientes*, § 76), this ought to be sufficient proof that the nine names which follow are those of the jurors who voted *Non liquet.* But this would give a minority of only fourteen (nine for 'Not Proven,' and five for acquittal) against eighteen for a conviction, whereas we are told in the *pro Caecina*, § 29, that the issue depended on a single vote. The number of those who voted *Non liquet* must have been, not nine, but ten. Possibly Cicero may be quoting a certain number (*longum est de singulorum virtute ita dicere*) of names from the list both of those who voted 'Not Proven' and of those who gave a direct verdict of 'Guilty': but see Introd. p. xxiii. *sq.*

iure, abl. of respect. *Peritus* more usually takes the genitive: so *iudiciorum* and *dignitatis* below.

fide, religione, officio, 'honour, conscientiousness, sense of duty.'

Non absolvit. Cicero is trying to get all the benefit he can out of the *Non Liquet* vote: cp. *Ne is quidem absolvit, quorum nullius sententia est Oppianicus absolutus, in eadem sententia fuit.* The other side might just as well, from their point of view, have said *Non condemnavit.* But Cicero wishes his hearers to believe that the *Non Liquets* were only postponing the day of reckoning: cp. *qui distulit cautus.. existimatur*, § 108.

Ne is quidem absolvit. 'No more did he acquit him,' or 'He didn't acquit him either.'

Longum est. See on § 36.

quae [quia] cognita sunt. If the MS. reading were correct, this neuter plural would be very loosely attached to what goes before. It were tedious, Cicero says, to complete the enumeration, *and to say things which* are so familiar as not to require any rhetorical ornament. Various conjectural emendations are enumerated in the critical note *ad loc.* I have ventured to omit *quia* from the text: it may have arisen from some kind of dittography. The words then

take the form of a general reflection: 'what is matter of common knowledge needs no rhetorical embellishment.'

ex vetere illa iudicum disciplina. Cp. § 76, where, however, *iudiciorum* occurs in place of *iudicum.*

iam tum florente re publica, 'in our country's palmiest days.'

Ex eodem numero, 'To the same category belong.' The phrase *ex* (or *in*) *eo numero* is far more common in Cicero than *ex eorum numero*: e.g. *pro Rege Deiot.*, § 24, *Ait nescio quem ex eo numero servum iudicatum.*

§ 108. quo in reo. For this use of *in*, see on § 13, and cp. § 32.

ambitiosus: so § 76, *ambitione adducti.* Contrast *misericordiam*, § 106.

qui distulit, 'he who deferred judgment,' *qui sibi non liquere dixit.* By voting 'Not Proven,' a juror virtually demanded a further hearing of the case (*ampliatio*).

XXXIX. **in contione,** 'on the platform.'

per multitudinem concitatam, 'owing to the excitement of the mob, it was impossible for any one to command a hearing,' lit. 'maintain a footing.' *Per* here of cause: cp. the instrumental use noted at § 25. For *consistere* cp. *Orat.* § 30, *qui in forensibus causis possit praeclare consistere*: *Sest.* § 113, *quibus in illo genere conductarum contionum consistendi potestas non erat*; similarly (of making a halt) *consistendi potestas*, § 193.

paucis diebus illis, ablative of time within which: 'a few days after that.' Cp. § 22.

privatus est factus: 'he went out of office.' The date for demitting office in the case of tribunes was 10th December.

hominum studia defervisse, 'that popular excitement had cooled down.'

§ 109. Iam: see on § 46.

spiritus tribunicios, 'his magisterial vapourings.' The phrase refers to what we might more colloquially term the official 'side' the tribune put on.

Quod erat odium: so *quanto in odio ... fuit*, § 110. Tr. "What a nuisance he was!" Cp. the common phrase, *Odio me enicas*, 'You are boring me to death' (*Rudens*, 944). So Plaut. *Asin.*, 446, *Iam hic me abegerit suo odio*; Hor. *Sat.* I. vii. 6, *Durus homo atque odio qui posset vincere Regem.* In such phrases *odium* is used of the feeling excited: it is also used in a concrete sense (as in the text), *e.g. Rudens*, 319, *Deorum odium atque hominum.*

ignorantia sui, 'his mistaken estimate of himself.' Most codd. have *ignoratio*, which Dr. Reid considers to be the correct Ciceronian form: see on *de Amic.*, § 71.

illud iam ipsum, lit. 'this fact taken already by itself': cp. on § 12 *ipsum nomen*; § 81 *ipsam multitudinem criminum.*

illa omnia, *i.e.* the subsequent proceedings of Quinctius: tr. "the whole trouble."

condonatum, 'pardoned out of compliment to.' Cp. §§ 195, 201.

XL. **§ 110. laudatoris**, 'witness to character: **advocati**, 'supporter,' see on § 56.

post adventum L. Sullae. When consul in B.C. 88, Sulla had curtailed the privileges of the tribunes by an enactment forbidding them to propose measures to the people without the previous sanction of the senate. In his dictatorship he also 'restricted their wide powers of interference (*intercessio*) to their original purpose of protecting individual plebeians' (Pelham, *Outlines*, p. 213).

a tribunicia voce: the tribune's eloquence had 'forsaken' the rostra. For this construction with passive verbs of *leaving*, cp. *deseri a mente, a spe*: so *a consiliis malitiae deseruntur*, § 183.

iucundior, 'rather popular,' 'something of a favourite.' For this 'absolute comparative' cp. on *alienior*, § 162.

Atque idem, adversative: 'and yet.' In this sentence *fuit* is suspicious (see not. cr.), and might well be omitted. s inserts after *ascenderat.*

§ 111. facite ut ... recordemini. For this periphrasis cp. § 11, *faciendum est mihi ut exponam*: also *Vat.* § 21, *Invitus facio ut recorder ruinas reipublicae* (so *de Sen.*, § 42): *ad Fam.* III. viii. 1, *faciendum mihi putavi ut tuis litteris brevi responderem.* Cp. on § 168, *fecisti ut ne cui.*

purpuram, *i.e.* the toga praetexta, which Quinctius would be entitled to wear as curule aedile, or praetor,—*after* his tribuneship (cp. *postea* and *in altiorem locum* above). For *demittere togam*, to wear a long, trailing robe, cp. *promittere barbam* (Verg. *Ecl.* 8, 34), to let one's beard grow.

quasi. So *proinde quasi*, § 138, and elsewhere.

Et iam querimur saepe. 'And do we often complain?' For *et* in the sense of 'and after this,' cp. the Greek *εἶτα* to introduce a rhetorical question or an exclamation. So frequently with *quisquam* in an indignant question, e.g. *Aen.* i. 48, *Et quisquam numen Iunonis adoret?* Cic. *pro Leg. Man.*, §§ 42, 45, *Et quisquam dubitabit*, etc.

hominibus novis, 'men of new birth,' 'self-made men.'

nobilitatis dignitatem, 'the high standing which rank confers.' The *nobiles* were all who had the *ius imaginum*: see on § 72.

tueri: cp. on § 152. **superbia,** 'uppishness.'

§ 112. intolerantia, 'unbearable presumption.' The word is passive in classical Latin; *i.e.* not 'intolerance,' but 'unendurableness.'

ita tulerunt ut: see on § 49. Tr. "People *did* put up with it, considering that he ought to be allowed the benefit of any natural advantages."

XLI. **illuc,** *i.e.* to the trial of Fidiculanius.

tu ... quid tum esse existimas iudicatum. This is the reading of ST; the other MSS. give *quaero quid tum.* But *quaero* could not stand parenthetically in such a context: it is misleading to print it between commas in § 114 below, as Müller does. Klotz and many editors adopt *quaeso*: cp. on §§ 30, 66. In view of its omission in ST, it is simplest to assume that the word had no place in the original text. One is reminded that the marginal adscript *quaere* has sometimes found its way into the body of a MS.: see Lindsay, *Latin Textual Emendation*, p. 61. This may be a case in point.

certe gratis iudicasse. This is Cicero's own rejoinder (made on behalf of Accius) to the question just put: 'surely that Fidiculanius had taken no bribe for voting as he did.' Then follows the sentence, 'But you will tell me,' etc. (*At condemnarat*), which is taken up by Cicero's own rejoinder, 'Well, then, all the trials that were got up by Quinctius were the work of injustice,' etc. 'Granted,' Accius replies, 'Falcula may have been innocent.' 'Now, then,' cries Cicero, 'this is equivalent to saying that,' etc. (*Iam ergo,* et sqq.) There is a difficulty about the sentence beginning *Iam ergo aliqui.* The substantial identity of the first clause with the third (*Iam putaretur* * *aliqui*) might be regarded with suspicion were it not for the deliberate assonance of *condemnavit—condemnarent—condemnasse.* It may be that in the words *Aliqui Oppianicum gratis condemnavit* we have again a case of the transference of index words, showing the contents of the paragraph, into the body of the text. Cp. the instances already commented on at §§ 58, 72.

Iam ergo. Tr. "We have, then, now come to this, that some one condemned Oppianicus without being bribed."

§ 113. aliqui, substantival: contrast §§ 7, 184.

eos. This may be no more than a rhetorical plural: cp. *In Verr.*, i. § 39, where the plural *senatores* is used. See on *iudicem*, § 96.

Iam videtur aliqui. After much hesitation, I have decided to adopt *videtur* in my text. A misunderstood contraction may have given rise to the diversity of reading. ST have *putaretur*, and it is significant that at § 31 where *putaretur* also occurs the other MSS. give *videretur*. Dr. Reid, who suggests *puto videtur* (see note in Transl.) is probably right in holding that an indicative is required by the parallelism of the clauses with *iam*: otherwise one might advocate *putetur*, on the basis of the reading of ST, pointing out the confusion between similar forms in § 96 and § 25 where the codd. wrongly agree on *arbitraretur* for *arbitretur*: so in § 201, 9, ST have *quereretur* for *queretur*, and again, § 155, *arbitretur*, ST: *arbitraretur*, FM. Cp. the significant variant *putaretur videretur*, § 31, 17; also § 16, *ad fin.*, where F has *videretur* for *putaretur*, ω: so too *Mil.* § 72, *videbatur*, P, and Quint. v. 11. 12, *putabatur*, ω. It is impossible to accept Mr. Faussett's defence of *putaretur*: 'it follows that some one might have been thought (by the jurors who acquitted him) to have honestly condemned Oppianicus, although he *did* not sit from the beginning.' *Necaretur*, § 45, is quite different: see *ad loc.* The common reading *potuit* (adopted by Müller) is inadmissible: immediately above we have *potuit esse innocens*, and *potuit ... sedisse* could not occur here: *poterit* would be preferable.

quaero quis sit nocens? 'I ask, who is guilty.' This form of question is resumed in the more direct *quis accepit*, which follows. Mr. Faussett defends *qui sit* (ST) on the ground that *qui* "gives a sense sufficiently distinguishable from that of *quis*: I ask, not what, but *what sort* of juror is guilty: where are we to look for a guilty juror." Cp. *Acad.* ii. § 9, *statuere qui sit sapiens vel maxime videtur esse sapientis.* The distinction is a very difficult one. See *Reisig-Haase* (Schmalz and Landgraf) n. 356, pp. 61-3.

in quemquam. Madvig's emendation *cuiquam*, accepted by recent editors, does not seem to be indispensable: any more than his *aut quidquam* (*aliud quidquam*, Davies) *fuisse* for *aliquid fuisse* ('or that there was something') in what follows. As Dr. Reid says, "Cicero is thinking of a definite statement that there was *something* different": this he denies. See collection of exx. of *aliquis* in negative sentences, *Reisig-Haase*, n. 352, pp. 53-4.

§ 114. niti videbatur, 'was seen to rely.' This is the reading of most codd.; it seems more probable than the *nitebatur* of ST, which is more likely to have arisen out of it than vice versa: cp. *Acad.* ii. § 70, where all MSS. have *facerent* for *facere dicerent.* Similarly *servi sumus—servimus* § 146. In § 51 ST wrongly give *laudari* for *laudi dari.*

Quamquam. 'And yet': used like *etsi* to introduce a limitation. **mihi**: ethic dative, as § 97.

ambitus: gen. of the charge, as at §§ 32, 97. *Ambitus* may be rendered 'corrupt practices at an election,' and was specially applicable to bribery when resorted to for the purpose of gaining office: cp. on § 98, from which it will appear that the statute under which a charge of corruption *ob rem iudicandam* would properly be brought (*propria lege huius peccati*) was either the statute *De Repetundis* (*Lex Servilia, Lex Cornelia*) or the *Lex Cornelia de Sicariis.*

§ 115. hoc ... istius criminis ... hac plaga all refer to the charge of having taken a bribe to vote for the conviction of Oppianicus.

P. Septimio Scaevolae litem eo nomine esse aestimatam: lit. 'that a penalty was assessed for P. Septimius Scaevola on that account,' *i.e.* that a separate charge was made under this head (*eo nomine*, cp. on § 99) in assessing the amount he was to refund. The *litis aestimatio* was the supplementary process which followed on conviction in the case of certain crimes where the punishment might be graduated according to the degree of criminality, *e.g.* embezzlement or extortion. By this process was determined the amount a defendant had to pay in name of damages, on what score each sum was to be exacted, and to whom it was due. Matters might be brought up at a *litis aestimatio*, which formed no part of the indictment preferred at the trial which had resulted in the defendant's conviction; and the entries thus made might form the subject of investigation before another *quaestio.*[1] Moreover other persons besides the accused might be incriminated, and might afterwards be brought to trial on the charge referred to in the 'assessment of penalty,' *e.g.* those who had been guilty of receiving misappropriated moneys, *ad quos pervenisse pecunias in litibus aestimandis statutum sit*, § 116.

The other side had cited the *litis aestimatio* in the case here referred to as having the binding force of a previous legal decision (*iudicium—praeiudicium*). Cicero does not dispute the statement that the court took Scaevola's alleged misconduct at the trial of Oppianicus into account in assessing the penalty fixed in his case (*litem eo nomine esse aestimatam*), though this alleged misconduct had formed no part of the indictment

[1] Cp. Ps. Asconius on *Verr. Act.* i. 39, *qui ambo peculatus damnati sunt.* Quid hoc, inquiet quispiam, ad iudicium corruptum pertinet? Respondebimus, litis aestimationem [fieri] non solum ex titulo propositi criminis, sed etiam *ex aliis probationibus*, quae ex ante actis rebus apud iudices constiterint. Hi, peculatus crimine prosposito, etiam quas iudicando pecunias ceperant reddiderunt.—H.N.

on which he was convicted of malversation. But he seeks to prove from analogous cases that if Scaevola had been brought up subsequently on a charge founded on that assessment he would in all likelihood have been acquitted; and he therefore contends that such assessments cannot be allowed the force of precedents.

in ceteris iudiciis, lit. 'in the other parts of actions-at-law,' *i.e.* in trying an accused. Some editors have adopted Pluygers' emendation *in cetero iudicio*. Perhaps we may explain 'all other trials,' = 'trials generally' (*Rosc.* § 12), as distinguished from the *litis aestimatio* which follows; cp. *ceteri*, §§ 28, 32 *ad fin.* Dr. Reid thinks that *ceteris* may be a gloss. I should prefer to retain it (cp. *neglegentius attendunt cetera* below), and to read *in ceteris, iudices.* Cp. § 89, 25.

§ 116. In litibus aestimandis, etc. In fixing the penalty, the jury, according to Cicero's argument, are disposed either to leniency, in order to avoid the appearance of further hostility towards one whom they have already turned into a personal enemy or else to carelessness, because they imagine they are now well through with the business of the court.

si quae in eum lis ... non admittunt, 'refuse to entertain any demand for a capital assessment made against him,' *i.e.* any capital charge which it may be proposed to make an element in the assessment. Dr. Reid says that *lis capitis* does not seem to occur elsewhere; but is the genitive not to be taken closely with the verb? Cp. *capitis aestimaretur* at the end of this section. For *illata* cp. *inferendis litibus*, *Rab. Post.* § 9.—For *non admittunt* Dr. Postgate (see not. cr.) proposes *non remittunt*, explaining that the jury is *severe* (not lenient) because they wish to get their enemy away from Rome. Taken by itself, *non admittunt* certainly does nothing to minimize the importance of a severe *litis aestimatio*. But the fact is mentioned as only one illustration of the comparative want of *diligentia*, or conscientious attention.

Itaque et maiestatis, etc. This being so, Cicero continues, even in cases where a graver charge (*e.g. maiestas*) has been admitted into the assessment (being a different charge from that on which the defendant was originally brought to trial), a court of justice often refuses to convict a man when subsequently brought to trial on this graver charge, thus plainly showing that it does not regard such assessments as precedents.

quibus ... lites maiestatis essent aestimatae, lit. 'though a penalty had been assessed against them for treason after they had been convicted of malversation.' Owing to the leniency, or carelessness (or both) generally shown by jurors in the *litis aestimatio*, a court of justice, Cicero says, will

generally refuse to convict in any trial subsequently arising out of such assessments. Thus, for example, a person is condemned *de pecuniis repetundis*; in the *litis aestimatio* new facts are brought to light which show that he has been guilty of *maiestas* as well; the jury accordingly add to the amount of the damages a sum which is charged under that special head; and yet, in spite of all this, when the accused is brought to trial on the charge of *maiestas* he is acquitted.

idem iudices, the self-same jurors in the same *quaestio.* In the *litis aestimatio* they incriminate certain persons as receivers of misappropriated moneys, and yet when these persons are formally brought before them on that charge they refuse to convict.

Scaevola condemnatus est, etc. Scaevola was found guilty on charges having nothing to do with any misconduct at the trial of Oppianicus (*aliis criminibus*). The taking of a bribe while serving as a juror would have been a capital offence, involving civil status (*capitis*); and Scaevola's enemies made a point of having it entered in the *litis aestimatio* which followed his conviction for malversation or extortion (*de pecuniis repetundis, in Verr.* i. 13, 38). Cicero argues however that if this assessment had had the binding force of a judicial precedent, Scaevola would have been brought to trial afterwards under the *Lex Cornelia de Sicariis* (*hac lege ipsa*).

capitis aestimaretur, 'should be capitally assessed,' *i.e.* the penalty was to involve the loss of civil status. Tr. 'Every stone was turned to get the damages assessed on this capital charge,' *i.e.* to get a capital penalty awarded.

vel isdem vel aliis inimicis, 'through the enmity of the same persons, or others.'

XLII. § **117**. **animadversionem**, accusation by attraction. "The punishment inflicted by the censors in the exercise of this branch of their duties (*i.e.* the *regimen morum*) was called *Nota* or *Notatio*, or *Animadversio Censoria.* In inflicting it they were guided only by their conscientious convictions of duty; they had to take an oath that they would act neither through partiality nor favour; and in addition to this they were bound in every case to state in their lists, opposite the name of the guilty citizen, the cause of the punishment inflicted on him, *subscriptio censoria* (Liv. xxxix. 42; Gell. iv. 20)" *Dict. Antiq.*

auctoritatem. For this concrete sense of *auctoritas* ('official deliverance'), cp. § 124, *auctoritates censoriae*: also §§ 138, 139. So also 'senatus auctoritas.'

incipio. For the present, cp. on § 6.

de meo officio, 'about my own personal relations.'

huiusce periculi, 'the danger in which my client stands': so *sine huius periculo*, § 118 below, and *huiusce vitae periculum*, § 188. For this use of *periculum*, see on § 18. The alternative reading *cum huiusce periculo* (omitting *tum*) is very difficult with *quoque*: tr. 'that I may show that I have been mindful of my other obligations *at the peril of my client*.'

ratio conservata. Cp. *rationem habere alicuius rei*, to 'take account of' a thing, give it consideration. A parallel may be found in the phrase *officia retinere*, § 133.

proxime, 'recently,' *i.e.* in B.C. 70, while the date of the speech is 66. It was in this year, the year of the first consulship of Pompeius, that the census is said to have been revived, having been allowed to lapse since the dictatorship of Sulla (B.C. 82). The censors were Cn. Cornelius Lentulus and L. Gellius (cp. § 120), and they showed great severity in the exercise of their powers.

altero: Lentulus, § 118. **plerique**: see on § 39.

magnus usus: so § 49.

summa ... necessitudo. A parallel passage in *pro Rege Deiotaro*, § 39, seems to be decisive in favour of *necessitudo* as against *consuetudo*: *quocum mihi amicitiam respublica conciliavit ... summam vero necessitudinem magna eius officia in me et in exercitum meum effecerunt.* The *est* which is found in most codd. after *necessitudo* may be omitted from the text: it probably results from the tendency of copyists already referred to (see on *se ... applicavit*, § 66) to repeat a word immediately beside the word with which it is connected. Ciceronian usage would have led us to expect rather *magnus* est *usus et*, etc. *Usus* and *consuetudo* of course often occur together, with very little difference of meaning (*Phil.* vii. 6, *Sex. Rosc.* § 15), but the insertion of *consuetudo* here probably arose from its resemblance to *constituta*, especially in contracted form; out of this arose *consuetudo vel necessitudo* (a reading cited from a Palatine MS. of Gruter); after which *necessitudo* was restored, with *est* to balance *est amicitia* above.

§ 118. subscriptionibus, strictly of the reason assigned (*cum istam ipsam causam subscriberent*, § 119: cp. for an actual example § 131) for the *nota* or stigma. Cp. on *animadversio*, § 117.

omnem orationem means 'every word I say.'

ratione censoria, 'the censorial system in general.'

qui a me ... honoris causa nominatur, 'whose name I mention with much respect,' a conventional phrase of frequent occurrence in Cicero's speeches, with much the same effect as "my honourable friend" in modern parliamentary debates. An indirect and almost apologetic method of allusion was adopted in making reference to living persons of distinction, in order to preclude the idea that they were being invidiously dragged into the discussion of the subject in hand; *Rosc. Am.* § 47, *homines notos sumere odiosum est, cum et illud incertum sit, velintne ii sese nominari.* Cp. *appellare*, § 18. The opposite is *contumeliae causa nominare*, *Verr. Act.* i. § 18. Similarly *Rosc. Am.* §§ 6, 15, 27; *Phil.* ii. § 30; and especially *Q. Rosc. Com.* § 18, *Nonne quoties cumque in causa in nomen huius incidisti toties hunc et virum bonum esse dixisti et honoris causa appellasti? quod nemo nisi aut honestissimo aut amicissimo facere consuevit.*

in amicorum periculis, 'when friends of his are imperilled by actions-at-law.' **sine huius periculo**, 'without imperilling my client's cause.'

fides huius defensionis, § 10. Mr. Faussett takes *huius* as masculine, governed by *defensionis*; 'loyalty in the defence of my client.' But it may go with the noun. Translate in either case, 'What is in honour due to the defendant.'

§ 119. istam ipsam causam might mean 'that very trial,' *i.e.* their conduct on the bench at the trial before Junius: cp. § 127, *haec quidem quae de iudicio corrupto subscripserunt.* But *istam* seems rather to require some such rendering as 'the very reason which you state,' or 'assigning the facts alleged *as* their reason.'

illud ... commune, 'the general thesis' (*proponam*) or 'proposition.' For the fact cp. *de Rep.* 4, 6, *censoris iudicium nihil fere damnato nisi ruborem adfert.*

in re nota is to be taken, on the reading of the text, closely with *consumam*, 'over a fact that is notorious.' This is the usual construction in Cicero with *consumere tempus, operam*, etc., though the simple ablative is also found in gerundial constructions (*dicendo*, etc.). Mr. Faussett's reference to the use of the preposition in § 57 (cp. §§ 13, 32), seems to postulate the alternative reading, *neque in re nota* ('where the facts are notorious,') *consumam tempus exemplis. Ponam*, etc. Classen thought that the final *s* in *exemplis* being mistaken for a *c* was the origin of *causa* (ST.): but on the other hand it may be held that *causa* is one of the words which, being written in contracted form, are specially liable to drop out. See below, § 120, *ad fin.* where *causam* is

omitted by most MSS.: and cp. on § 15. And moreover, on Classen's reading (adopted by Ramsay), we should have to construe *ponam illud unum* sc. *exemplum*, whereas *ponere* here, as often in Cicero, means 'I shall assert (lit. lay down) as true': *Or.* § 14, *pro Cael.* § 15, *Div. in Q.C.* § 16.

C. Geta, consul B.C. 116, removed from the senate in the following year by the censors Metellus and Domitius, afterwards elected censor B.C. 108. "The *ignominia* was thus only a transitory *capitis deminutio*, which does not even appear to have deprived a magistrate of his office (Liv. xxiv. 18), and certainly did not disqualify persons labouring under it for obtaining a magistracy, for being appointed as iudices by the praetor, or for serving in the Roman armies. Mam. Aemilius was thus, notwithstanding the *animadversio censoria*, made dictator (Liv. iv. 31)." *Dict. Ant.*

et cuius mores. *Et* is here explanatory (cp. *altera pars et ea*, § 2); 'that is to say, a man whose,' etc.

moribus praefuisse. So *praefectus moribus*, § 129

Quod si, etc. The argument is continued in this sequence: "Well but, if the censor's stigma had the effect of a judicial decision, such promotion as that of Geta would be impossible. Whereas what are the facts? (*Nunc* si quem, etc.). Why, a successful prosecution undertaken by a censor's body-servant has more lasting effects than the *animadversio* of the censor himself."

illud, *i.e.* the censorial stigma. Cp. § 122, *si ista iudicia appellari vultis.*

ceteri. Cp. §§ 32, 28.

turpi iudicio damnati ... hominibus ignominia notatis. This antithesis involves the distinction, such as it was, between *infamia* and *ignominia*. *Infamia* followed conviction on a charge attaching grave personal discredit (*turpe iudicium*), such as *furtum, iniuria, dolus*, or conviction in a *iudicium tutelae* (*de Or.* i. § 166), *pro socio*, or *mandati*. It was thus attached necessarily and inevitably, but not always by express declaration or deliverance, as a definite penalty for the commission of certain offences, and it involved the loss of many civil rights, *e.g.* the right of voting or holding public office. Like the offence of belonging to a disgraceful profession, such as that of a play-actor, misdemeanours of the kind specified above were regarded as necessarily involving *notatio* of a permanent character, though the disqualification might vary in each case with the offender's sphere of action. *Ignominia*, interpreted as the result of the censor's *notatio* (§§ 129, 131, 134), was exclusively political in its effects,

which might be less serious and not permanent; *de Rep.* 4, 6, *ut omnis ea iudicatio versatur tantummodo in nomine, animadversio illa ignominia dicta est.* Thus where the extreme powers of the censors were not exercised, their *animadversio* "was not followed by strictly penal consequences. Though it might disqualify it did not punish." *Dict Ant.*

in perpetuum, either by reason of the nature of the offence in itself, or because a permanent character was sometimes given by succeeding censors to a decision once pronounced, *e.g.* in a case of perjury. *De Off.* i. § 40, *eos omnes censores, quoad quisque eorum vixit, quia peierassent, in aerariis reliquerunt.*

§ 120. Nunc, 'but as things are,' §§ 139, 148, 171.

condemnarit. Used of an individual procuring a conviction by instituting a criminal prosecution. Under the republic *furtum* was not a criminal offence but only a civil wrong. Conviction on such a charge, Cicero says, would have far more serious results than the *notatio* of the censors. The repetition of *furti* below, along with *captarum pecuniarum* (the taking of a bribe while serving as a juror, § 103), seems to show that Gellius and Lentulus, in their rigorous censorship of the year B.C. 70, had included in their *subscriptio*, in certain cases, charges of theft which had not yet been made the subject of a judicial decision, and which were afterwards disproved. Cp. § 121, *in compluribus iam reis quos contra leges pecunias accepisse subscriptum est.*

omnibus ornamentis amissis, 'losing every civil privilege,' e.g. *ius honorum, ius suffragii, ius imaginum*, and the right to wear the *latus clavus.*

viri ... homines. See on § 77.

nomine, § 99, lit. 'under the head of.

iudiciis, ablative of occasion. Tr. 'Were judicially acquitted of the offences laid to their charge.' So *iudicio absolvi, Sex. Rosc.* § 65, *Q. Rosc.* §§ 36, 40; *iudicio damnari, Verr. A.P.* § 10. *Rerum* is a genitive of the charge, and is not in government with *iudiciis.*

XLIII. **non modo.** See on § 9.

iudicem, § 74.

convenisset. For this personal constr. cp. Plaut. *Most.* i. 3, 146, *bene igitur ratio accepti atque expensi inter nos convenit*, and frequently, in Caesar and Sallust, such expressions as *pax, signum committendi proelii*, etc., *inter eos convenit.* In this sense *convenire* is often used impersonally; and also in the passive *pacem frustra conventam fuisse*, Sall. *Jug.* 112.

quibus exceptum est, *i.e.* containing, in what may be called 'saving clauses,' an enumeration of the reasons which disqualify from, etc. Cp. *pro Balb.* § 32, *quod si exceptio facit ne liceat, ubi non est exceptum ibi necesse est licere.*

haec ignominiae causa. Editors take *ignominiae* as a genitive of definition='this ground, namely, *ignominia.*' This involves the traditional explanation that *ignominia* is technically and exclusively used of the *censoria notatio.* See on § 119 above. But Dr. Reid takes the phrase as meaning 'this kind of *ignominia* as opposed to others,' and would read also *hominibus hac ignominia notatis* in § 119. Below (§ 121) we have *censoria ignominia.*

in illa potestate, *i.e.* in the censorial office. The intention was that while the censors should be a 'terror to evil-doers' (*timoris causam*) their stigma should not last for life.

§ 121. populi Romani suffragiis: as when Geta, for example, was elected censor, § 119. Cp. *a populo rescindi,* § 122.

iudices, senatores equitesque Romani. For the composition of the *iudicia* at different periods, see Introd. p. xxvii. *Iudices* is nominative, not vocative; cp. on § 131.

pecunias accepisse subscriptum est. Cp. *captarum pecuniarum nomine notaverunt,* § 120, above. The *subscriptio,* in which the censors assigned the reason for their *notatio,* contained the statement of this alleged corruption.

in lectos iudices. For the *Album Iudicum Selectorum* or 'Register of Special Jurymen,' see on § 103, *non suae decuriae munere.* Their high character is evidenced by Hor. *Sat.* i. 4, 123, *unum ex iudicibus selectis obiciebat.*

§ 122. appellari. I prefer to adopt the passive form here, in accordance with the rule laid down by Reid on *Acad.* ii. § 42: "It is the prevailing, though not universal custom, not only of Cicero, but of the other classical prose writers, to use the passive infinitive with verbs of desire, even where the active would stand and make sense, and where it would be naturally used by moderns." See his exx. *ad loc.* Cp. note on *reticeri,* § 18.

Atque etiam: 'Yes, and what is more,' § 74. For a case of unseemly quarrelling between two colleagues in the consulship (C. Claudius Nero and M. Livius Salinator, B.C. 204), see Livy xxix. 37. Instances, on the other hand, of harmonious co-operation (*concors censura*) are recorded, Livy xlii. 10, *Concors et e republica censura fuit. Omnes quos senatu*

moverunt quibusque equos ademerunt, aerarios fecerunt et tribu moverunt, neque ab altero notatum alter probavit : cp. xl. 51, and xlv. 15.

tanti, 'of so little account.'

rescindat. No actual veto was required for this; it was enough if either of the two censors withheld his active concurrence and support.

in aerarios referri, 'to disfranchise.' The *aerarii* were a class of citizens who were originally excluded from the tribes, and paid only a poll-tax (*aera pendebant*), not a *tributum* on landed property. Appius Claudius Caecus, censor B.C. 312, admitted them into the tribes, along with the freedmen; the censor in 304 restricted them to the four *tribus rusticae* (which afterwards included also the freedmen as well as the *capite censi*). While the *aerarii* were excluded from the tribes they had no *ius suffragii*, and probably no *ius honorum*. During this period, therefore, the effect of *in aerarios referre* was complete disfranchisement. Later the phrase indicates not *loss* of tribe but *transference*: the censors might degrade a man by changing him from a rural to one of the city tribes, the members of which constituted a lower class, taxed on their personalty instead of on land, but possessing of course the *ius suffragii* and the *ius honorum*. Mr. Faussett thinks that the active infinitives *referre* and *movere* are more probable (after *movere velit*) than *referri*, *moveri* (cp. on *appellari*, above), and would supply an accusative subject, such as *scribas*. This somehow seems, however, more difficult with *vetet* than with *iubeat*. The censor was said *tribu movere*, and he would not therefore be said *tribu movere iubere*, or *vetare*.

The use of *aut* instead of *et* (as usually in Livy, *e.g.* iv. 24, 7; xxiv. 43, 3; xlii. 10, 4; xliv. 16, 8; xlv. 15, 8) shows that Cicero has two alternative processes in mind. The first (*in aerarios referre*) amounts to complete disfranchisement, such as naturally took place in the days when the *aerarii* were outside the tribes, and might, in extreme cases, be decreed even afterwards: Livy, xlii. 10, 4, quoted above, *aerarios fecerunt et tribu moverunt*. The second process (*tribu movere*) means removal from the country to the less reputable city tribes, a minor form of disqualification: Livy, xlv. 15, 4, *Neque enim si tribu movere possit, quod sit nihil aliud quam mutare iubere tribum, ideo omnibus quinque et triginta tributus emovere posse, id est civitatem libertatemque eripere*. (In itself *tribu movere* might refer to either process: contrast Livy, xlii. 10, 4 with xlv. 15, 8. But a distinction is obviously intended by the context here.)

discrepare. The impersonal construction is more usual.

XLIV. § **123**. **subscripserint,** suboblique: contrast *quia verum est,* § 124 below. Here the subjunctive is used quite naturally, following on *quia censores subscripserint* in the preceding sentence.

videte ... ne: cp. on § 97.

regiam, 'despotic.' The Romans never forgot their experience of the excesses of absolute power.

illa acerbissima proscriptio. The horrors of the Sullan regime were still fresh in men's memories, cp. § 24. Note the assonance of *subscriptio ... proscriptio.*

multis remediis: *e.g.* the provision that the *nota* of one censor was of no effect without the concurrence of his colleague.

illum dictatorium gladium. This connects directly with *illa acerbissima proscriptio* above. For the contrast between *stilum* and *gladium* cp. *cedat ... stilus gladio, pro Mur.* § 30. Of the MSS. S alone omits *gladium,* and is followed by most edd.: we must then repeat *stilum* and cp. for the double meaning (pen, dagger) *Phil.* ii. § 34, *si meus ille stilus fuisset, ut dicitur, non solum unum actum sed totam fabulam confecissem,* Hor. *Sat.* ii. 1, 39.

§ **124**. **sin autem, etc.** 'But if the censor's note ought to have weight because it is true.' The construction is *sin autem quod subscriptum est* (*id*) *quia verum est* idcirco *grave debet esse.*

auctoritates censoriae: cp. § 117.

aliquando. I have ventured to insert *aliquando* in the text in addition to the vulgate *unum denique aliquod.* The use of *unum aliquod* is of course common enough in Cicero = 'a single one': cp. *in Verr.* ii. 1, § 62; *Div.* § 27; *pro Sest.* § 19. So also § 185 below, *unum aliquem nominatim.* The addition of *aliquando* may be defended as introducing the element of time in addition to *quam ... pecuniam, unde,* and *quem ad modum.* Palaeographically the occurrence of *aliquid* in S before *profectae,* and the omission of *aliquod* in ST, may be held to justify the suggestion of *aliquando.* Cp. too § 92, *si in aliquam legem aliquando non iuraverat* where ST omit *aliquam.* So *aliquid aliquando* are very frequently conjoined: *Sest.* § 14, *Planc.* § 35, *Mil.* § 67.

vince. So Hor. *Sat.* ii. 3, 225, *Vincet enim stultos ratio insanire nepotes.*

amplexator. The regular form is to be preferred to *amplexato,* in spite of Priscian; see crit. note. The homoeoteleuton in *defendito* probably led to the substitution. For

the imperative of contingent fulfilment (future imperative, *e.g.* *putatote*, § 18), chiefly used in laws, maxims, and familiar language, see Roby 1495.

§ 125. tabulas publicas ... corrupisse : testamentum interleverit. See § 41.

supposita persona, 'by fraudulent personation,' lit. a character having been falsely substituted, or assumed. Cp. our word 'supposititious' and the Greek *ὑποβάλλεσθαι*. For *persona*, cp. §§ 59, 78, 101. For the story of Asuvius, see §§ 36-39.

avunculum filii sui, *i.e.* M. Aurius, son of Dinaea, and brother of Magia, the mother of the younger Oppianicus. See §§ 21-23.

municipes suos ... curaverit, § 25.

eius uxorem, Sassia, § 26.

pro abortione, § 34.

socrum : Dinaea, § 40.

uxores, rhetorical plural. Many MSS. have *uxorem*, which is strictly correct, Cluentia being the only one of his wives who is spoken of as having been murdered by Oppianicus, § 30. But for *uxores* (ST) cp. § 52, *hominis in uxoribus necandis exercitati.*

fratris uxorem speratosque liberos fratremque ipsum. See §§ 31, 32.

suos liberos : see §§ 27, 28.

deprehensus sit : § 47.

pecuniam iudici dederit. For this transaction, see §§ 49-69.

tenebitur, of maintaining a charge: cp. the use of *haerere*, § 86, and elsewhere.

voluntas, lit. what the censors choose to think : their 'good pleasure.' **Opinio** their 'fancy.' So the two words are conjoined in *pro Domo*, § 32 : cp. *iudicium an voluntatem*, *Verr.* ii. § 175. Both are much less strong than *iudicium* would have been.

XLV. **§ 126. ut gravissime dicam,** 'to put the case at its strongest.' With the alternative reading *dicant*, tr. 'Though they should put their case as strongly as possible.'

dicent, *sc.*, *se secutos esse.*

nihil se testibus, etc. "Much as the censor's decision resembled a trial at law in outward appearance, in the accusation that was usually, though not always, put forward by a

third party (Livy, xxxix. 42. 7)[1], and the defence which was permitted to the accused (Plut. *C. Gracch.*, 2), it differed from it in the fact that there were no fixed rules of procedure for conducting the case" (*Dict. Ant.*, s.v. *Infamia*). It was in fact not a *iudicium* but an *animadversio*.

quae summa est. For this adversative use of the relative (= *quae tamen*) Faussett compares *pro Sest.*, § 115, *Sit hoc sane leve, quod non ita est*: *Div in Caec.* § 40, *quodsi ego haec ... adsequi non potui, qui in omni vita nihil aliud egi*, etc.

non ... aliquem. See on § 113.

scribam aedilicium. "The clerks of the curule aediles, mentioned by Cicero (in the text) and Livy (xxx. 39. 7) and often in inscriptions, formed one decuria, presided over by ten head clerks" (*Dict. Ant.*, s.v. *Scriba*).

cum defendissem. This was probably a case of re-appointment. Cicero advocated the claim of Matrinius, whose clerkship was endangered by the stigma that had been affixed to his name by the censors of the year B.C. 70.

aerarium reliquissent. I accept here the traditional reading against *reliquisse subscripserunt* (TF) *reliquisse scripserunt* (S). To say nothing of the minor difficulty caused by the omission of *se* (harsher here than, *e.g.* at § 100, where *accepisse* is repeated from the previous clause), *subscripserunt* occurs in its proper sense (*subscriptio*, § 118) only three lines below, and may easily have got out of position here, if indeed it was not introduced from the margin. As to *aerarium relinquere*, if this were the only passage in which the phrase occurred, we should undoubtedly interpret it as meaning to leave a man in the class to which previous censors had degraded him, *i.e.* to confirm and continue the stigma upon him. But in a parallel passage in Livy the same phrase occurs in reference to cases where there is no question of degradation by previous censors: *exitu censurae, cum in leges iurasset C. Claudius, inter nomina eorum quos aerarios relinquebat dedit collegae nomen* (xxix. 37). Here the expression is appropriate to the action of Claudius who, at the close of his term of office, confirmed a pronouncement which he had himself made against his colleague: but when we find the same phrase used of the wholesale disfranchisement of the thirty-four tribes by Livius, we are forced to conclude that it means little more than *in aerarios referre*, though used rather in regard to the effect of the action of the censors than to the action itself: *Deinde M. Livius ... quattuor et* XXX *tribus*

[1] Cp. § 134, *si qui contra dicere vellet.*

aerarios reliquit. ... *Inter quattuor et* xxx *tribus et C. Claudium aerarium fore* (Livy, l. c.). Cp. *in aerariis relinquere* (*de Off.* i. § 40). Dr. Reid thinks the meaning here is to "leave among the *aerarii* a man who possessed the qualifications that would lift him above that class but for the adverse opinion of the censors as to his character." But *quid de eo statutum esset*, below, seems to point to a definite degradation.

§ 127. Nam haec quidem. Though it is tempting to read *Iam* for *Nam* (cp. §§ 46 and note, 57, 67, 109), it is better to assume an ellipse, *e.g.* 'and they were right: for who would say that the censors were sufficiently careful in the case before us?' Tr. "Why, with regard to the note in question ... who would hazard the opinion that," etc. In *Nam illud quidem*, § 148 below, the transition is easier: cp. *Verr.* iii. § 107, *Nam illud quidem non dices.* On the other hand, *Iam illud quidem perspicuum est* (*de Fin.* i. § 56), summarising an argument.

dicant. Madvig proposed to read *iudicant*, which is adopted by Müller. But there seems to be no reason for departing from the unanimous tradition of the MSS.; and having regard to Cicero's use of *videlicet* in replying to questions, I now insert a mark of interrogation after *dicant.* Cp. § 148, *Qui eorum? Videlicet qui supra scripti sunt*: also § 143: *Caec.* § 44; *in Verr.* ii. 2. 80. The subject is certainly *censores*, a fact which has an important bearing on the very difficult passage, *Aut illud adferant* immediately below. Madvig thinks that such an appeal to the censors is quite out of place: but cp. the whole of § 129, and *dicunt, existimant*, § 133.

ut habebantur, of the whole drift of the tribune's haranguing: construe as the passive of *habere contionem.* For *contio*, cp. §§ 127, 103.

in culpa ... ponendi. So § 57, *in honore atque beneficio ponerent*: *pro Sest.*, § 139, *in laude positos*: *Verr.* iii. § 212, *Neque ego hoc in tua laude pono.*

adfines, 'connected with,' 'implicated in': Plaut. *Trin.* 331. So *pro Sulla*, § 70, *huic adfines sceleri*, *Catil.* iv. 6, and elsewhere. The genitive also occurs: *pro Sulla*, § 17, *huius adfines suspicionis*: *de Inv.* ii. § 129, *adfinem esse alicuius culpae eum qui accusaretur*: Ter. *Haut.* 215, *illarum adfines rerum.* No difference of meaning can be established between the two constructions.

aut illud adferant. Taken by itself, this might very well be a challenge to the other side, especially as we have in what precedes *auctoritate censorum ... iudicari*, and not, for

example, *a censoribus ... iudicatos esse.* On this view the words would introduce a challenge to the prosecution to produce facts implicating the others,—facts which might have come to light since the *censoria subscriptio.*[1] The most suitable emendation might then be *aliquid eos* or *aliquid censores* for *aliquid esse.*

But in view of *dicant* above, and *Nam illud* in what follows it is more probable that the challenge is addressed to the censors. They are first (α) asked if they are going to say that *two only* were guilty (*duos esse corruptos solos pecunia dicant?*) Cicero then drives home the inferences involved in this statement, viz. that the others were innocent, and that the conviction of Oppianicus was a righteous judgment. Next (β) he resumes, *Duos solos video,* etc.: the censors, he says, must either acquiesce in this view of the case, *or else they must make the allegation* (*aut illud adferant,* etc.) that they ascertained some fact implicating the others. For a third alternative supposition (*Nam illud,* etc.) (γ) is untenable, viz. that they had evidence of the guilt of more than Aquilius and Gutta, but proceeded on the analogy of military *decimatio.* The view that *adferant* refers to the censors, not to the prosecution, derives additional force from the fact that *comperisse* is frequently used of the result of an investigation by a magistrate. Cp. *Milo,* § 73, where Mr. Clark remarks that *omnia comperi* was Cicero's favourite phrase at the time of the Catilinarian conspiracy.

The MSS. give *Aut illud adferant aliquid esse quod de his duobus habuerint compertum de ceteris comperisse.* The corruption lurks in *esse,* which may indeed conceal a lacuna, such as *aliquid esse* postea cognitum et *quod,* etc. No fault can be found with the *quod* clause, though most editors, following Graevius, insert *non* before *comperisse*: it is difficult on that reading to see the force of a challenge to the censors, on pain of acquiescing in the statement that two only were guilty, to make the averment that they had failed to bring home to the rest (*de ceteris* non *comperisse*) the charge which had been established against Aquilius and Gutta. Such a failure, Dr. Reid thinks, might still leave the *ceteri* in the position of *adfines ei turpitudini.* They might still be objects of suspicion (*in culpa ac suspicione ponendi*). But surely the challenge is to prove that the offence which the censors had visited on two of the jurors had been shared in by the rest of those who had voted for the conviction of Oppianicus: in which case alone could their action be cited as proof that the verdict had been procured by bribery.

[1] Cp. § 135, from which it will appear that Egnatius senior may have acted independently of the censors.

As to the reading, *esse* might be dropped altogether : or we may accept, as has been done in the text, the easy emendation *sese*. I have also thought of inserting *et* and reading *aliquid esse et ... comperisse*, *i.e.* let the censors allege that there is still 'a something' (§§ 113, 149) and that they have ascertained, etc.

habuerint compertum. This construction (with *teneo* as well as with *habeo*) is not a mere circumlocution for the perfect, but "lays peculiar stress on *the maintenance of the result*" (Gildersleeve-Lodge).

XLVI. **§ 128. notationes.** See on *animadversio*, § 117.

flagitium rei militaris, 'a gross breach of military discipline,' such as cowardice, loss of standards in action, or mutiny. The phrase = *flagitium in re militari admissum* : for the genitive cp. *pro Flacco*, § 5, *Hispaniae*, *Galliae*, *Ciliciae*, *Cretae ... vitia et flagitia* (for *in Hispania ... admissa*) : *pro Mur.* § 22, *virtus rei militaris.*

sortito, lit. 'after drawing of lots.' See on *consulto*, § 78.

in quosdam, generally every tenth man (*decimatio*). This punishment, frequently practised under the early republic, as by Appius Claudius in the Volscian War, B.C. 495, was revived in the civil wars, and was resorted to under the empire (Tac. *Ann.* iii. 21; *Hist.* i. 37). Sometimes only the twentieth man was punished (*vicesimatio*), or the hundredth (*centesimatio*).

in delectu dignitatis, 'in choosing men to fill high rank,' *e.g.* drawing up a list of members of senate. The genitive is of the sphere of action, like *rei militaris* above.

qui convenit? lit. 'how is it consistent, or fitting?' Tr. 'Surely it is altogether inappropriate' to follow this analogy.

impetum vimque, hendiadys, 'the furious onset': see on § 13.

potest idem. For this adversative use of *idem* cp. § 137, *idem ... repudiavit.*

qui ... deliquerat ... ei. For the form of the sentence cp. § 129, *qui pretio adductus eripuerit ... is ... non inuretur?* The pluperfect is to be explained 'in cases where there *had been* such cowardice, there was held up to the offender,' etc. : *i.e.* after the fact, every one felt that he had made himself liable to the extreme penalty. It seems to me that the occurrence of *si a multis* esset *flagitium rei militaris admissum* in the earlier part of the section is decisive in favour of this reading of ST. The vulgate *ne ... delinqueret* is probably a

change effected by some one who did not see why the fear of punishment should be represented as operating *after* the act of cowardice. But cp. § 129 *ad fin.*, *Aut quam condicionem supplicii*, etc., where *timiditati militis* represents the cowardly soldier (the soldier who *has shown himself* a coward), while *improbitati senatoris* = the wicked senator (the senator who *has taken* a bribe). So the late Professor Nettleship: "The point of the passage is that the decimation takes place after the act of cowardice, in order to punish a few by death, and the majority *by the terror of death*; *amplior metus* being the agony of fear endured by the soldiers while waiting to see on whom the lot will fall. This fear, and the sight of their comrades' punishment, will act both as a punishment for the past and a deterrent for the future. But (he says) there is no real analogy between the soldier who has once shown the white feather and the juryman who has once given a corrupt verdict; the one may retrieve his fault, the other is so tainted as to be unfit for public life."

amplior mortis et supplicii metus, lit. a 'more comprehensive' fear of capital punishment,—fear that extended to every soldier (cp. *metus ad omnes, poena ad paucos*, above) who had been guilty of cowardice, though ultimately the *sortitio* mitigated the severity of the procedure.

§ 129. in senatu legendo, *i.e.* in making up the list of the senate, from which Aquilius and Gutta would be excluded, in consequence of the censorial *notatio*.

ut velis, potential, 'at your own sweet will.' The emendation *voles* is easy, but unnecessary.

te ... vidente, 'with your eyes open.'

quemquam, emphatic, 'any at all.' *Quisquam* is usually substantival.

ad perniciem, 'to the ruin,' *i.e.* to procure it. For this use of *ad* (of the 'end in view') cp. *ad salutem*, § 3; *ad ignominiam* below, and § 134; and such a sentence as *trecentos armatos ad custodiam corporis habuit*, Livy, i. 15. 8.

magister veteris disciplinae ac severitatis, 'the high-priest of this time-honoured and rigorous system,' or (as Faussett) 'a graduate in the stern school of ancient virtue.' For this use of *disciplina* cp. on § 107 *ex vetere illa disciplina iudiciorum.* The word is often used in conjunction with *severitas* as a hendiadys: *Acad.* 2, § 64; Tac. *Dial.* 28. 11 and 24; *Germ.* 25. 7.

non ... convenire, 'that there is nothing in the fitness of things to require that.' For *convenire* cp. *qui convenit*, § 128.

Aut quam condicionem. This sentence may be made to furnish a useful lesson in textual criticism. The reading adopted is that of the Turin palimpsest. On the other hand, we have in ST, *affici oportere convenire ut ad quam ... constituas*; from which might easily result a text constituted as follows: *aut statuis qui in eadem culpa sit non eadem poena adfici oportere,* et *convenire ut quam condicionem ... eandem tu in pace constituas.* We might argue that the confusion arose when some scribe construed *oportere* et *convenire* together (along with *adfici*), then dropped *oportere* as superfluous, and erected what follows into an independent question. But in view of the great age of the Turin palimpsest (though its authority cannot always be followed), it seems more probable that, in the first place, *oportere* slipped into the text as a gloss on *convenire*, to which an *ut* was gratuitously added (with the consequential change of *constituas* for *constitues*), and *aut* altered into *ad.*

While the text runs smoothly enough, in one continuous question, on the alternative reading suggested (except for *aut* statuis ... *convenire ut* ... constituas), the analogy of *Hoc tu idem facies censor* and *tu non animadvertes* makes strongly in favour of the future in an independent question *eandem tu in pace constitues.*

factum esse oportuit. This usage (sometimes without *esse*, as *accusatum oportuit*, § 90) seems to have belonged to familiar style, and to have been common in early Latin. Instances in Terence are *Adelph.* 214, *morem gestum oportuit*; *Heaut.* 536, *haec facta ab illo oportebat*; *Andr.* 239, *nonne prius communicatum oportuit.* So with *decuit, debueram,* etc.

in multorum peccato, 'where many are guilty.' See on *in eadem iniuria*, § 32.

ad ignominiam [et turpitudinem]. So *Verr.* i. § 23, *per ignominiam turpitudinemque.* For our text the authority of the Turin palimpsest (which omits *et turpitudinem*) would be sufficient to justify the deletion of *et turpitudinem* as a gloss (cp. *a tribuno seditioso* below), were it not that the reading it gives is *et ignominiam* for *ad ignominiam.* Possibly the true reading may be *ad turpitudinem et ignominiam*: cp. *Verr.* i., § 49. Merguet strangely quotes *paucos ex multis ad ignominiam [et turpitudinem] sortiere* from the beginning of the section.

XLVII. **§ 130. ventum quendam popularem,** 'the breeze, as it were, of popular favour': cp. on § 77. The action of the censors was, in fact, a 'bid' (*quaesitum*, cp. § 131) for popular applause.

probatum erat illud. The construction is the usual *probare causam alicui*, as § 102. Cp. § 77, *iudicia minus iam probari populo arbitrabatur*; and see on § 52. *Illud* = the view that was set before the mob at its *contiones*. The vague use of the demonstrative might be held to favour the retention of the words *a tribuno seditioso* in the preceding line: they also give more point to *contra dicere* in what follows. But here again it is difficult to disregard the authority of T, and to accept these words as part of the original text: it is at least equally probable that they are a later addition.

multitudini: nemini licitum. This reading, originally conjectured by Antonius Augustinus, was afterwards found in the Turin palimpsest: other MSS. give *multitudinem inlicitum.* In the archetype the words would appear thus—MULTITUDININEMINILICITUM: the repetition of the syllable IN caught the eye of some scribe, who wrote *multitudinem inilicitum*, afterwards corrected to *multitudinem inlicitum*, "a combination perfectly satisfactory as far as the mere words are concerned, but destitute of sense" (Ramsay, Introd. *ad fin.*).

laborabat, 'put himself about to.'

illa iudicia. See on *illa iudicia senatoria*, § 61.

paucis postea mensibus, *i.e.* a few months subsequent to the trial of Oppianicus, after which Quinctius had at once begun his agitation (§ 74). No one has proposed to alter *postea* to *antea*, though the date given for the incident referred to is B.C. 75, the year previous to the *iudicium Iunianum.* At the trial of his kinsman Terentius Varro, Cicero's rival Hortensius had bribed the jurors, and, in order to make sure that they had kept their contract with him, had caused the voting tablets (*tabellae*) to be marked in a peculiar way (*Div. in Caecil.* § 24: *in Verr.* i. § 40).

alia vehemens erat ... invidia versata, etc., the jury-courts 'had been the scene of another grave scandal.'

macula iudiciorum: cp. *macula familiae*, § 12.

Homines, accusative: resumed by *eos.* The particular reference here is to Aquilius and Gutta. In his speech against Verres (i. §§ 39, 40) Cicero conjoins the conduct of the jurors at the trial of Oppianicus and the scandal of the marked voting-tablets in his invective against the senatorial jury-courts.

illo ipso tempore, illis censoribus, *i.e.* in B.C. 70, the date of the *Lex Aurelia*, and also of the censorship of Lentulus and Gellius.

illa iudicia. The demonstrative is said to be wanting in the Turin palimpsest, but occurs in all the other MSS. It seems almost indispensable to the sense, as the reference is to the courts as formerly constituted, *i.e.* while the senate had the monopoly of them.

§ 131. nihil ... habuisse ... comperti. Cp. *habuerint compertum*, § 127.

rumorem, see on *rumusculos*, § 105: **quaesitum,** see on § 130.

quo: see on § 9, where the usage is exactly similar.

id ipsum, lit. that taken by itself, to go no further: cp. on *ipsum nomen*, § 12.

quantae divinationis est: 'what a power of guess work (§ 97) it implies,' what a gift of second-sight. For the genitive cp. *vestri auxilii est ... subvenire*, § 4.

cum ... dixerunt is the reading of all MSS.: editors, except Müller and Faussett, have substituted *dixerint.* In this adversative use of *cum* ('whereas,' 'although'), "the coincidence in time serves to set off strongly the unreasonableness of the action" (*Roby*, § 1731).

homines sapientissimi, iudices. It is best to understand *iudices* here as = *cum iudices essent*, *i.e.* 'sitting on the bench of jurors,' and so well qualified to judge: cp. § 121, *Primum iudices, senatores equitesque Romani.*

§ 132. condemnat ... iudicat. Note the force of these terms in the context: 'it is a conviction that Gellius records against Popilius: his verdict is,' etc.; Lentulus on the other hand 'takes an opposite view' (*negat hoc Lentulus*).—The most that Cicero can make out here is that while both censors concurred in removing Popilius from the senate, they assigned different reasons for their action: contrast *quod erat libertini filius* (objective statement of fact) with *quod is pecuniam accepisset*, § 131, above (subjunctive of reported reason). It by no means follows that Lentulus made any formal denial of the charges as stated in his colleague's *subscriptio.*

libertini filius. This supports the view that Appius Claudius in his censorship (B.C. 312) made the *grandsons* of freedmen eligible for a seat in the senate, not the *sons*: Hor. *Sat.* i. 6. 20.

locum quidem, etc. *Quidem* is here adversative: cp. on §§ 54, 50: also *interea quidem*, § 155 below. Similarly *Or.* § 62, *id nos fortasse non perfecimus, conati quidem saepissime sumus.*

ludis. For this ablative, cp. § 27, *ludis aut festis diebus.*

cetera ornamenta: 'the other insignia of his office.' Besides sitting among the senators at the games and other public festivals, Popilius might continue to wear the *toga praetexta*, the *calceus lunatus*, etc.

ambitus: 'corruption': see on §§ 98, 114.

pro testimonio, lit. 'in virtue of his character as a witness,' 'for testimony,' *i.e.* in the witness-box: § 139. Cp. such phrases as *pro imperio, pro potestate agere* (§ 74). Lentulus was one of Popilius's *laudatores* or 'witnesses to character': §§ 56, 196, 197.

iudicio stetit. The same usage occurs §§ 96, 122.

XLVIII. **§ 133. Nullam quidem ob**, etc. 'Yes, but not for,' etc. *Quidem* is here used to lessen the force of the preceding statement. Mr. Faussett compares *de Fin.* i. § 35: Torquem detraxit hosti. Et *quidem* se texit ne interiret. At magnum periculum adiit. In oculis *quidem* exercitus.

in omnibus officiis retinendis, etc., 'in the observance of every moral obligation.' Similarly (of social relations) *officiorum rationem conservare*, § 117.

secuti sunt, as § 126 *ad init.* They allowed themselves to be influenced by the talk about bribery: with *illam famam iudicii corrupti*, compare § 4, *illam infamiam iudicii corrupti.*

potuisse if undoubtedly right, and there is no need for Madvig's emendation *posse*, which is, however, adopted by Mr. Faussett. Tr. 'Their feeling was that the prosecutor could not possibly have been overlooked after the jury had been censured.' What the censors thought at the time of affixing their *nota* is cited as their defence now: they would say '*praetermitti accusator non potuit, cum*,' etc. For the unconditional indicative in the direct (*posse, debere*) cp. § 60: Roby, § 1566: for the oblique statement, cp. § 153, *potuisse ... pervenire si ... voluissent.*

[tota]. There is some point in *tota*, alongside of *unum* and *omni*. For the tendency of S and T to omit words, see Introd. p. xlviii.

si ... protulero. So *Acad.* ii. § 64, *Aggrediar igitur si pauca ante quasi de fama mea praedixero*: cp. my note on Tac. *Dial.* 16, *Aperiam inquit cogitationes meas si illud a vobis ante impetravero.*

ex omni antiquitate. So *de Or.* i. § 18, *tenenda praeterea est omnis antiquitas exemplorumque vis*, ibid. § 201: *in evolvenda antiquitate*, Tac. *Dial.* 30.

§ 134. mihi, probably with *praetereundum* rather than with *videtur*, if a choice must be made.

cum censor esset. Scipio the younger was censor in B.C. 142, along with L. Mummius, the conqueror of Corinth. The story is told also in very similar language by Valerius Maximus, iv. 1. (*De Moderatione*).

in equitum censu, 'at the review of the knights.' This inspection of the *equites equo publico* took place in the forum, and each knight as his name was called, according to his tribe, walked past the censors, leading his horse. If the censors had no fault to find, they ordered him to pass on (*traduc equum,* Valer. Max. iv. 1, § 10): but anyone who was considered unworthy could be struck off the list and deprived of his horse (Livy, 39. 44) or ordered to sell it (Livy, 29. 37), "with the intention no doubt that the person thus degraded should refund to the state the money which had been advanced to him for its purchase" (*Dict. Ant.*).

verbis conceptis, 'in a set form of words, 'solemnly and deliberately.' Long cites *de Off.* iii. § 108, *sicut verbis concipitur more nostro,* 'according to our solemn formula.'

contra ... dicere, *i.e.* to take up the roll of accuser: cp. on § 126, *nihil se testibus,* etc.

contentae, *i.e.* it was enough for them: so § 119.

ad ignominiam: see on *ad perniciem,* § 129.

Quod si hoc Habito facere licuisset. Cicero evidently means us to understand—though he wishes to make as little of the incident as possible—that no one moved the censors to censure Cluentius, and that he had no opportunity of defending himself: see again note on *nihil se testibus,* etc., § 126. Their 'animadversion' on the prosecutor in the *Iudicium Iunianum* followed consequentially, according to what is said here, on their censure of the jurors.

The text is usually construed, 'But if it had been permitted to Habitus to do this,' and on the explanation that *facere hoc* is used in a vague sort of way for 'to be treated like this' (τοῦτο πάσχειν), the meaning extracted is, "But if this treatment had been accorded to Habitus," *i.e.* if he had had a fair-minded censor like Africanus, and had not been censured when there was no evidence against him. The words cannot mean, 'if Habitus had had the same opportunity,' *i.e.* of defending himself: Sacerdos had not needed to offer a defence.

Instead of founding on this vague use of *facere* (Lewis and Short, s.v. ii. E.), Dr. Reid proposes to construe 'if an opportunity had been afforded of doing this to Habitus,' *i.e.* if the censor had granted an opportunity (according to Scipio's example) for anyone who pleased to bring a charge against Habitus, *hoc facere* being explained by *si qui contra vellet*

dicere, above. For the dative with *facere*, see on § 186. On this view, it is tempting to propose *libuisset* for *licuisset*: 'if the censors had only cared to give Habitus the same chance.'

If *Habito* were not in construction with *licuisset* (instead of, as Dr. Reid suggests, with *facere*), Cicero would probably have emphasised the subject in the next clause, *facile* is *illis ipsis iudicibus*. On the whole it is best to acquiesce in the traditional explanation, especially as Cicero is purposely vague.

illis ipsis iudicibus, 'with these same censors for his judges.'

populariter, 'by mob oratory.' So § 93; *popularis*, § 77.

§ 135. quod elogium recitasti, 'the fact, namely, that you read a clause,' etc.

videlicet, ironical.

levitate, 'want of ballast'; the opposite of *gravitas*.

inconstantia, 'untrustworthiness.'

eius modi est ut. This construction is equivalent to saying that the will 'contained peculiar features.'

alienissimos, 'men who were in no way connected with him.'

Sed tu ... consideres censeo. For the construction cp. note on *vos quaeso memorio teneatis*, § 30.

censorum iudicium. The reference here (as in *quod censores de ceteris subscriperunt*), is to the cases with which the orator has been dealing, the censure, namely, of Aquilius, Gutta, Popilius, and Cluentius.

censoria subscriptione, ablative of attendant circumstance, lit. 'with a censorial endorsement,' a censor-like notification of the why and wherefore of his action. The reference is to the clause quoted from the will, *quod is ob Oppianici condemnationem pecuniam accepisset.*

The alternative is to take *subscriptione* as a causal ablative, and to understand it as referring to the actual notification of the censors. For the constr. Dr. Reid cites *de Leg.* iii. § 15; *Phil.* i. § 30; *Div. in Caes.* § 8; *Fin.* ii. § 83, and iii. § 34; *Brut.* § 308.

But it does not appear from the context that the censors actually censured the younger Egnatius for his conduct at the trial; cp. *in senatu ... retinuerunt.* On the contrary the whole incident is used by Cicero as a transition from the action of the censors to that of the senate. Accius had cited the fact that Egnatius, senior, had disinherited his son on the ground of his conduct at the trial of Oppianicus. Cicero at once rejoins with a *dilemma.* His opponent, he says, cannot claim

at one and the same time the benefit of the censors' action in the cases with which he has just been dealing, *and also* rely on the action of Egnatius senior; for this gentleman had himself incurred their censure.

§ 136. Suscepit causam, it 'took the matter up.' What happened was that the senate passed a resolution referring in general terms to the circumstances of the *Iudicium Iunianum*, and calling on the consuls to take measures for securing an investigation into any case of bribery at a criminal trial. In ordinary course this would have been followed by the consuls bringing in a bill (*rogatio*, § 137, *ad fin.*), to give effect to the resolution and establishing a special *quaestio* (§ 137, *ad fin.*). But the excitement cooled down; the consuls took no action, and the people acquiesced.

An potuit? See note on § 60, *An vero illi... rescinderent?* "*An* is frequently used in a question apparently simple, but which may be regarded as really the second member of an alternative question, the first being either not put in the form of a question or left to be inferred from the context. It introduces questions which imply the needlessness of the preceding remark, or meets an anticipated objection," Roby, 2255. So here, virtually, "Of course it did; could it have refused?"

rem paene ad manus revocasset, 'had made the question all but one of fisticuffs.' So *Verr.* ii. § 127, *res revocatur ad sortem*; *Caec.* §§ 38, 76, *ad incertum revocari*; cp. the use of the verb of "referring" a thing to some standard (*referre*= *ἀναφέρειν*); *Amic.* § 59, *omnia ad suam potentiam revocare*; *Phil.* iii. § 30, *reliquas res ad lucrum praedamque*. Similarly *redeo*; Caes. *B.C.* iii. 93, *pilis omissis ad gladios redierunt*; *Auct. B. Afr.* 18. 4, *ad manus reditur*. With *manus* cp. *vim et manus afferre*, §§ 161, 163.

vir ... homo. See on § 77.

invidia flagraret, 'was in a blaze of unpopularity.'

de iudiciis, *i.e.* about criminal trials in general. Cluentius would be just as ready, Cicero says, as the senate was to vote for the resolution in question.

§ 137. istam legem, contemptuous. No law such as you could have founded upon, says Cicero, was ever introduced by the consuls.

L. Lucullus, consul, B.C. 74, along with M. Aurelius Cotta. He was succeeded in the following year by his brother M. Terentius Varro Lucullus, who had for colleague C. Cassius Varus.

anno post, *i.e.* within a year from that date.

in quos, lit. 'looking to whom,' or 'for whose time of office.' The resolution was doubtless so worded that if the consuls for the year did not act upon it, it would devolve upon the consuls-elect to take it up on entering office.

neque id ... confirmas, 'without backing your statement by the merest shred of suspicion.' Cp. *pertenuis suspicio,* § 168.

primum followed by **ipse deinde populus.** I print the whole as one sentence.

quod tu ... arguis, 'with regard to your allegation.'

factum est ... ut id ... non arbitrarentur. Cp. § 153, *non fecerunt idem...ut putarent,* and see on § 168. The repetition of *id* in *ut id quod ... id postea* seems rather harsh, in spite of *hunc locum ... eum,* § 7, and *hoc quod ... id ego,* § 17; the text would run more smoothly *ut quod senatus decreverat...id.* Tr. "They did not feel under any obligation, in fact, to submit at a later stage to the people, etc."

ad illud invidiae praesens incendium restinguendum, 'with a view to quench the flames of that momentary outbreak of popular feeling.'

ferendum. I accept Dr. Reid's emendation in place of the MS. *referendum* or *perferendum.* The common usage is *ferre* ad populum, *referre* ad senatum. Orelli explains *referre* here as *denuo, rursus ferre,* to 'carry back to' the people; but this would involve the assumption that a formal proposal for legislation on the subject had previously been made to the people, which is not the case. Some action on the part of the senate had been called for at exciting public meetings (*rem illam et rogationem flagitarat*); but nothing short of the formal introduction of a *lex* on the subject before the *comitia* by a tribune would seem to justify the use of *referre ad populum* in this context.—In § 20 ST give *retineretur* for *teneretur,* and other places might be cited where the prefix is either wrongly inserted or wrongly omitted (ST *nuntiant* § 24, against P and ω *renuntiant*).

C. Iunii. For the circumstances of his trial see §§ 89-96. Junius's little boy may have been brought on the platform at some *contio.* For *lacrimis commoveri,* cp. *Mil.* § 101.

maximo clamore et concursu, *i.e.* they 'ran together with great uproar' to disown the whole affair.

§ 138. intellegi potuit, *i.e.* 'any one could have seen.'

ut mare .. agitari. The infinitive is due to *oratio obliqua* rather than, as Mr. Faussett says (comparing *reliquisse* in §

171), to attraction. The first member of the comparison is in fact 'reported,' like the second; for a more obvious instance cp. Tac. *Hist.* i. 17, *Iri in castra placuit: honorificum id militibus fore, quorum favorem ut largitione et ambitu male* adquiri *ita per bonas artes haud spernendum.* So Livy, xxxiii. 45, *Scribebant ut feras quasdam mitescere arte, sic inimitem et implacabilem eius viri animum* esse.

L. **auctoritas .. mea.** See on *auctoritatem censoriam,* § 117. For Cicero's previous expressions of opinion on the case see Introd. p. xxvi. *sq.*

ex oratione nescio qua. This may have been the first *Actio* against Verres (70 B.C.). Cp. *Cum enim accusarem,* § 139. See especially §§ 38, 39.

cum ... tum, 'not only... but also,' this among other trials; *tum* introducing the more important assertion; cp. § 140; *cum ... tum vero,* § 159. The variant *tum ... tum* ought to be rejected on the ground that while in later Latin (*e.g.* Quintilian and Seneca) this combination has the force of *et ... et* ('alike ... and'), in Cicero it is said to occur only with the meaning 'sometimes ... at other times.'

probata non essent, 'had not given satisfaction': see on §§ 61, 101. The subjunctive is due to virtual *oratio obliqua.*

proinde quasi: so *quasi,* § 111. Cp. § 140.

ab initio, 'in commencing,' as again § 142. So also *a principio* instead of the simple (local) ablative (*initio,* §§ 139, 169; *principio,* § 188): *e.g. Brut.* § 157, *Dixeram a principio de republica ut sileremus,* and Tac. *Ann.* i. 1, *Urbem Romam a principio reges habuere.*

populare, 'matter of public notoriety,' 'in everybody's mouth. Similarly *tam populariter agitata,* § 139.

§ 139. Ego vero, *i.e.* My reply is, etc. Cp. *Planc.* § 59, and often elsewhere.

neque cognitum commemoravi, lit. 'I did not mention something ascertained.' Dr. Reid says, "*Cognitum* does not mean so much as 'upon personal investigation,' but is a mere synonym of *certum,* as in *Acad.* ii. 16."

pro testimonio, 'in the witness-box,' *i.e.* on oath (*iuratus*). See on § 132.

temporis mei, 'the exigencies of the situation in which I found myself.' Mr. Faussett cites *Vatin.* § 2, *si in tanto hominis periculo et tempori eius et voluntati parere voluissem*: *Verr.* i. § 33, *ex istius tempore et causa.*

offensiones iudiciorum: 'instances of unpopular verdicts.' For the genitive cp. *flagitium rei militaris*, § 128. For *offensio* (lit. 'stumbling') see on § 69, and cp. *propter offensionem iudiciorum, Verr.* v. § 178.

Sed errat vehementer, etc. Cp. *de Off.* ii. 14, 51, *patroni est non numquam veri simile, etiam si minus sit verum, defendere.* A safer line is taken in § 142 below, *Quod si velim confiteri*, etc. The orator seems to have overlooked the possibility of the jury applying the argument to his present discourse.

auctoritates nostras consignatas, 'an authentic record of our personal convictions.' The reference is general (cp. on *a nobis*, § 3), though Cicero is of course thinking mainly of himself.

causarum ac temporum sunt, 'are conditioned by particular cases and emergencies': cp. *temporis mei*, above.

hominum ipsorum, tr., 'they do not involve the personal character of the advocates.

nunc, 'but as things are'; § 120.

ex re ipsa causaque, 'from the facts of the case'; so again, § 141, *ex re et ex causa.* There is no difficulty about *ducantur*: it means 'what can be deduced from the bare facts,' though it has been proposed to render 'what is considered suitable to the facts.'

§ 140. M. Antonius, grandfather of the triumvir, and father of Cicero's colleague in the consulship, divided with *Crassus* (L. Licinius) the honours of the Bar at Rome in the age preceding that of Cicero. For the fact of his never publishing his speeches, cp. *Orat.* § 132, *Crassi perpauca sunt nec ea iudiciorum ... nihil Antoni* (*Brutus*, § 163). Antonius and Crassus are the two leading characters in the *De Oratore*: see Prof. Wilkins's Introduction.

si quid aliquando, etc., lit. 'if it were not advisable that something at some time should have been said by him,' *i.e.* if ever there were anything which he might as well have left unsaid.

dixisse, *sc.* **se**: for the omission see on *posse arbitrati sunt*, § 36.

proinde quasi, §§ 111, 138.

LI. **in isto genere**, 'under this head,' 'in matters of this kind'; *i.e.* with regard to such alleged inconsistencies.

cum ... tum: cp. on § 138.

accusante M. Bruto. He was called *Accusator*, *De Off.* ii. § 50. Cp. *Brutus*, § 130, *fuit accusator vehemens et molestus*; *De Or.* ii. § 223 *sq.*; *Quint.* vi. 3, 44.

in dissuasione rogationis eius quae ... ferebatur: 'in opposing the bill that was brought in against sending a colony to Narbo.' See *Brutus*, § 160, from which it appears that when the senate tried to suppress the attempt to found a colony at Narbo (Narbo Martius, now Narbonne, on the Gulf of Lyons), Crassus identified himself with the popular party, and led forth the colony himself. This was in B.C. 118.

legis Serviliae. This was the bill introduced by Q. Servilius Caepio in B.C. 106 to restore to the senators that monopoly of the *iudicia* of which they had been deprived, in favour of the *equites*, by C. Gracchus. In his speech in support of this bill, Crassus would naturally disparage the order which was at the time in exclusive possession of the coveted privilege.

quo: see on § 9.

illorum iudicum, the jurors of the day, *i.e.* the knights.

§ 141. utriusque rationem temporis: 'the conditions of the two several occasions.'

quo lepore et quibus facetiis praeditum, 'with what a gift of wit and humour.' So *erat cum gravitate iunctus facetiarum et urbanitatis oratorius non scurrilis lepos*, Brut. § 43, of Crassus, whom Cicero admired greatly (*Crasso nihil statuo fieri potuisse perfectius*).

pater illius accusatoris: 'the father of the "Prosecutor," as he was called': see above, § 140. So *contra accusatorem Brutum, De Or.* ii. § 220.

ruri in Privernati: Tr. 'At my country place at Privernum.' *Ruri* is of course a locative; with *Privernati* supply a noun, such as *agro* or *fundo*.

flagitabat, *i.e.* he asked him what had become of it.

hominem sapientem, 'like the wise man that he was.' So *De Or.* ii. § 224, *Sapiens videlicet homo cum primis nostrae civitatis norat hunc gurgitem*; *metuebat ne, cum is nihil haberet, nihil esse ei relictum putaretur.*

honeste, 'with decency.'

in balneis. The elder Brutus had built public baths as a speculation (*balnea meritoria*). Prof. Wilkins, on *De Or.* ii. § 223, cites, as similar instances, *balneae Pallacinae*, *Rosc. Am.* § 18, *balneae Seniae*, *p. Cael.* § 61.

cum id aetatis filio, 'with a son of that age.' So *De Or.* l.c., *Quod nisi puberem te, inquit, iam haberet quartum librum composuisset et se etiam in balneis lotum cum filio scriptum reliquisset.* Literally *id aetatis* is an accusative of duration with a partitive genitive dependent on it: "During that

much of age" (Roby, § 1092 and § 1296, with which latter cp. note on *hoc consilii*, § 71). Cp. *id temporis*, *pro Milone*, § 28, with Mr. Clark's note; where however it is an error to render *cum id aetatis filio*, 'of such tender years.'

non praeterisset, *oratio recta*: 'he would not have omitted,' said Crassus, 'to mention it.' For the transition from indirect discourse cp. *voluerunt*, § 154.

tabulis ... censu, 'his account-books and the censor's register.'

de re publica. So *de Or.* ii. § 223, *contraria inter sese de re publica capita*, 'passages containing opposite views on political questions.' Cicero wishes his hearers to understand that inconsistencies in judicial pleadings were not of such importance, ignoring the fact that the change of view alleged against himself concerned an absorbing political issue, the administration of the *iudicia*: cp. § 139.

§ 142. illa: the passage quoted as above, § 138.

ab illo tempore ... ab ea causa ... aliena. So § 139, *omnes enim illae causarum ac temporum sunt.*

oneris: I did not 'come under any obligation,' or commit myself to anything that ought to hinder me from, etc.

illa populari opinione: the 'current popular prejudice.' See especially §§ 138, 139.

ab initio: see on § 138. For the reference cp. especially § 6.

LII. **§ 143. opinionem** is the subject of *fefellisse*, the construction being like that in *nisi me fallit animus*, *spes eum fefellit*, etc. Tr. 'That you were greatly out of your reckoning when you thought': for the slight pleonasm in *opinionem ... quod existimaris*, cp. § 145, *illa oratio ... quod ait Accius.*

lege. For the statute, see Introd. p. xxix. *sq.*, from which it will be seen that in strictness the part of the *Lex Cornelia de Sicariis* which referred to 'judicial circumvention' did not apply to Cluentius, as he was neither a senator nor one who had held one of the higher magistracies.

tibi sic renuntiari. To bring out the anticipatory sense of *sic* (introducing *me habere*), and also to render *hoc*, which is in apposition with the infinitive that follows it, render: "What you have often told me is this, that the information lodged with you is to the effect that," etc.

videlicet. The occurrence of this word shows that there should be no mark of interrogation at *prodimur* and *deferat* as Ramsay and Faussett). For its use in replying to questions (see on § 127.

amicos nostros. It is difficult to decide between *nostros* and *nobis*: for the latter cp. *Non possum ei non amicus esse*, *Fam.* ix. 24. The adjectival construction would seem to be the commoner of the two with *inimicus*, as often in this speech.

lex ipsa renuntiavit. For the significance of this statement, as bearing on Cicero's legal argument, see Introd. xxxi. note.

ita defendisse ... ut. Tr. 'Have I in my defence so much as mentioned the statute.' For *ita ... ut* cp. §§ 112, 49, 88.

teneretur. Similarly §§ 144, 145, 148, 150.

ut hominem confirmare oportet: 'so far as it becomes a fallible being to speak positively.' Similarly *Tusc.* 2, § 65, *prudentes ut est captus hominum satis*, 'in so far as human capacity admits': *pro Leg. Man.* § 70, *pericula facile*, *ut hominem praestare oportet*, *innocentia tecti repellemus.* Cp. also § 52, *quod timide dicam.*

purgandi istius invidiosi criminis: 'of refuting the odious charge made against my client,' the charge namely of having used bribery to procure the conviction of Oppianicus. From this and other phrases (see Introd. p. xxxii.) it will appear that Cicero does not always observe the distinction between *invidia* and *crimina* so carefully drawn in ch. i.

§ 144. fortasse. This is the preferable form: *fortassis* cannot be established for classical Latin. Cp. § 201.

displicetne mihi. I return unhesitatingly to the reading of ST, though it has been unanimously rejected by editors in favour of *displiceatne mihi*,—evidently a correction made by some scribe who thought that *quaeret fortasse quispiam* must go with what follows. *Displicetne mihi* is a question which the orator puts to himself, and which he answers in *mihi vero ... non displicet.* There is thus no call for Halm's emendation *displicetne tibi* (for which cp. *Verr.* ii. 5, § 180). Cp. the direct interrogative following *Quid ergo* in § 147.

utor instituto meo, 'I am following my habitual practice.' So *vetere instituto*, § 199.

hominis honesti prudentisque, 'a reputable and intelligent person.' If it were not that *consilio* occurs below (with *voluntati*), seeming to take up *prudentis*, I should propose to read *pudentis* instead: cp. *pudor*, *honesta vita*, § 83; *pudentissimo et in primis honesto*, § 165. So *pudor*, § 133: cp. § 94.

qui ... deberem, parenthetical: "When this case was put in my hands—and I ought to know the laws." This clause seems to hang evenly, as it were, between *ad me* in what precedes, and *dixi* in what follows; its effect is, how-

ever, to give weight to the prompt opinion rendered on the occasion. For *eo capite ... liberum esse, teneri*, cp. § 151.

eo capite, 'under the section *Whosoever shall have conspired to procure a verdict of guilty.*' For the Sixth Chapter of the *Lex Cornelia de Sicariis et Veneficis*, and a discussion of the question whether Cluentius was formally impeached under that chapter, see Introd. p. xxx.

ne se lege defenderem, *i.e.* not to base his defence on a technical point of law. The jury is invited to believe that Cluentius was so conscious of his innocence that he was prepared to allow his counsel to go into the 'merits' of the case, though the 'plea in law' that the action was incompetent would have saved him a great amount of trouble and annoyance.

§ **145. neque enim**, etc., 'for indeed a lawyer ought not always to act as I did.' *Enim* gives the reason why Cicero is particular to state the grounds of his action: cp. §§ 70, 89.

plus dignitatis, *i.e.* it would be more 'high toned,' more consistent with self-respect: cp. § 107.

ut hanc causam obtineremus, 'to get a verdict,' § 156. This can mean nothing else than a verdict of acquittal.

LIII. **illa oratio ... quod ait Accius**: Tr. "The argument of Accius, when he says."

indignum esse facinus si, etc., 'that it is a monstrous thing that,' etc.: cp. δεινὸν εἰ. For the colloquialism *indignum facinus*, Mr. Faussett cites *ad Att.* ii. 13 *init.*; *Verr.* ii. 5. 113; *Sest.* § 108.

§ **146. Ut tibi concedam**, concessive: 'even were I to grant you.' Cp. § 150, *ut id iniquissimum esse confitear.*

quod cuius modi sit iam videro: 'I shall consider presently how the matter stands.' For this use of *videro* (in all persons) to put off the consideration of a question, with the view to a decisive settlement, cp. *Fin.* i. § 35, *Quae fuerit causa, mox videro: interea hoc tenebo.*

discedi, 'that a departure should be made from': impersonal.

vinculum ... dignitatis. "Our laws," Cicero says, "are the bond which secures to us the honourable rank (*dignitas*: as §§ 118, 147) which we hold in the commonwealth: they are the basis of our liberties and the fountain-head of justice." For the attraction in *hoc ... hoc ... hic*, see on *haec*, § 34.

ut nervis et sanguine et membris. It would seem that the *ut* must be pressed: 'so a state cannot use its parts,'

being as sinews,' etc.: *i.e.* the *partes* are to the *civitas* what *nervi*, *sanguis*, *membra* are to the *corpus*. Hartman proposed to delete these words, but they occur in *Quint.* v. 11, 25.

Legum ministri magistratus (sc. *sunt*). 'The law has its ministers in our magistrates.' The use of *servi sumus* in what follows may have reminded Cicero's hearers of the etymological meaning of the words *minister*, *magister*: it is as though he had said, 'Those who are *over* us (*mag-is*) are *under* (*min-us*) the laws.'

interpretes, 'spokesmen.'

legum ... servi sumus. It is very difficult to choose between the two readings here, but in spite of the authority of P. (which gives **legib. niq. idcirco omnes servimus**) I am inclined to think that *legum ... servi sumus* is right. The triple repetition of *legum* is effective, and for *servi sumus*, as against *servimus*, cp. *niti videbatur*)(*nitebatur* § 118.

§ 147. Q. Naso, in all probability the same person as Q. Voconius who is mentioned below (§ 148) as the *iudex quaestionis*. His full name was Q. Voconius Naso.

hi iudices tali dignitate praediti, 'the members of this most honourable court.' Cp. on *talium virorum*, § 3.

tam diu ... dicendi: cp. on § 29.

Quid sibi ... volunt? 'What is the idea of?'

ceteri quos apparere ... video: 'the other officers whom I see in attendance on this court.' After enumerating *scribae* and *lictores*, Cicero employs a collective designation which reminds us that *Apparitores* was the general name for the public officers attached to the service of the magistrates at Rome. In addition to *scribae* and *lictores*, there were *accensi*, *viatores*, and *praecones*.

quasi mente quadam legis, 'by what I may call an intelligent force, namely the law.' *Legis* seems to be a genitive of definition or material: cp. Eur. *Hec.* 65, σκίπωνι χερός, 'the staff which is thine arm.' Dr. Reid, on the other hand, takes *legis* as a genitive of possession, and would render 'by the intellectual force, if I may so call it, of the law': *quasi quadam* being the apology, as it were, for the unusual expression *mens legis*.

Quid ... inter sicarios, 'What about the court ... for cases of assassination?' For *inter sicarios* see Introd. p. xxx. note. So numerous were the cases that came before this *quaestio* that the praetor assigned to it had the co-operation of the three *iudices quaestionis* named in this section—Naso, Plaetorius, and Flaminius.

peculatus, *sc. quaestio*: the court which deals with the embezzlement of public moneys. Orchivius has been already mentioned in § 94, where the case of Faustus Sulla (*de pecuniis residuis*) must be regarded as having come under a special department of *peculatus, i.e.* that which dealt with the misappropriation of public moneys by state officers to whom they had been entrusted for public purposes. For the whole subject of *Peculatus*, see Appendix B in Heitland's *Pro C. Rabirio*, pp. 88-93.

mea de pecuniis repetundis. Cicero was praetor in the year B.C. 66. For *pecuniae repetundae* see on § 104.

de ambitu, as § 98, where see notes. Mr. Faussett defends *ambitus*, the reading of ST: but Müller seems right in saying that we never find such a construction as *sceleris causam dicere*: *capitis causam dicere* is different (cp. *Mil.* § 59, where editors prefer *quaestio de incestu* to *quaestio incesti*). There is an exact parallel to the order of words in *Sest.* § 18, *ne de ambitu causam diceret.* The divergence between *ambitus* and *de ambitu* may point to a gloss: *apud quem* nunc *causa dicitur* would be enough to enable Cicero's hearers to identify the *quaestio.* Or again, the true reading may be *lege ambitus*: cp. § 156, *ea lege causa dicitur.*

reliquae quaestiones: for example, the *quaestio* under the *Lex Cornelia de maiestate* (§ 97), the *quaestio* which dealt with matters of breach of trust, inheritance, and forgery, under the *Lex Cornelia de falsis*: also the *quaestio de vi*, established by a *Lex Plautia* (Sall. *Cat.* 31).

imperio et praescripto. For the substantival use of the participle cp. *de Or.* ii. § 302, *ex oratoris dicto aliquo aut responso aut* rogato: *Verr.* v. § 139, *satis est factum promisso nostro ac* recepto.

§ 148. clames te...non teneri. The *Crimen Repetundarum* (*pecuniarum*) was originally a charge of extortion, with a claim for restitution in name of damages, preferred against a provincial governor; and it was afterwards extended to all acts of malversation. It also appears to have been made to include the taking of a bribe by a *iudex* (*pecunia ob rem iudicandam capta*); at least such a clause appears in the *Lex Iulia Repetundarum* (B.C. 59) which probably followed the *Lex Cornelia*, and also the still earlier *Lex Servilia*, at least to the extent of embodying the provisions which enjoined proceedings against those into whose hands the misappropriated money had passed, *quo ea pecunia pervenerit* (*pro Rab. Post.* ch. iv.) See the note by Dr. Reid on § 104 above: *qua lege*, etc. If Accius could plead that he had never held

any office nor discharged any duty that could make him liable to the terms of the statute (cp. note on § 98), he could of course refuse to take his trial. Moreover he was a Roman knight, and the section of the *Lex Repetundarum* referring to judicial corruption applied only to senators (*a senatore*, § 104): cp. *pro Rab. Post.* ch. vi.

periculi non legitimi, 'a risk to which the law does not expose you.'

LIV. **quid ... iuris constituatur,** 'the principle of law you are laying down.'

lex ea, qua lege. Cp. on *causam ... in qua causa*, § 49. The *Lex Cornelia de Sicariis et Veneficis* dealt with charges of assassination and poisoning, and also with the crime of procuring a judicial conviction by unjust means. The peculiarity of the statute was that, while any one could be brought to trial under the former heads, those only who had held high state office, or who were members of the senate (*i.e.* all members of the senate, official and unofficial), were liable to impeachment under the latter. Accordingly Cicero contends that, if he were allowed to rest the defence on the letter of the law, Cluentius, as a Roman *eques*, could plead that it did not apply to him. Cp. Introduction, p. xxxiii.

iudicem quaestionis. This was the 'presiding judge,' Q. Voconius Naso. The *Quaestio de Sicariis et Veneficis* had, as we have seen (§ 147), two other *iudices quaestionis*, Plaetorius and Flaminius, besides its own praetor. The *iudex quaestionis* in this court was "a criminal judge of somewhat lower rank than the praetor, holding an office that belonged to the regular circle of the magistracies. *Brut.* § 264, Mommsen. *Staatsr.* ii. p. 686 ff.," *Dict. Ant.*

cum eis iudicibus, *i.e.* the *consilium* of the presiding judge, consisting of jurors selected, according to the mode appropriate to the particular *quaestio*, from the *Album Iudicum.*

vos appellat. Cp. § 65, *Te, Oppianice, appello*: and see on § 18.

Infinitum est: "there is no limitation of persons." In contrast with this are the terms of the Sixth Chapter of the law, which is no longer general, but is applicable only to certain classes of offenders: *deque eius capite,* etc.

legionibus, dative of possession. There were four first legions, five second, and four third. The four first were those assigned in early times to the consuls: their twenty-four tribunes ranked among the *magistratus*, as being appointed, not by nomination of the consuls but by popular election from the senatorial or equestrian orders.

condemnaretur. The present subjunctive would have been more usual; but, as Mr. Faussett says, "the thought reverts to the date (in the past) at which the conspiracy was formed." Cp. *pertinerent*, § 164; *adferret*, § 168; *sublevarent*, § 195.

videlicet: §§ 127, 143.

Quid interest. The direct question in the indicative, with the reply *Etsi est apertum*, etc., seems much more appropriate to the context than the generally received *Quid intersit ... lex nos docet.* What does it matter, the orator asks, whether the statute is in general terms or with a limitation of persons? The reply is "The difference is obvious, and, moreover, the statute shows it on its very face."

Ubi ... omnes mortales adligat, *sc. lex*: 'Where it makes itself binding on every human being.'

venenum malum, 'a noxious drug.'

viri mulieres, liberi servi, 'men and women, freemen and slaves.'

Nunc, 'as it is.' So §§ 120, 139, 171.

§ 149. Num is est Cluentius? *sc. qui magistratum habuerit*, etc. 'Does Cluentius come under this head?'

Qui tamen, etc. "No matter: he has refused," etc. *Tamen*="at any rate": *i.e.* whatever be the category to which he belongs, he was prepared to face this action.

lege, 'according to the letter of the law.' Cp. *lege defensurum, praesidio legis*, § 143.

est aliquid, 'but there is something else.' See on § 127, and cp. 113, *aliquid fuisse in Fidiculani causa quod idem non esset in ceterorum.*

sua interesse. "No satisfactory explanation has been given of this construction. One view is that *mea refert* was originally [*ex*] *mea re fert* (like *ex mea re est*), 'it is to my advantage,' and that *ex* was lost. *Interest* having much the same force, but being later in development, took the constructions of *refert* by false analogy." *Gildersleeve-Lodge*, 381. 5. Cp. Roby, 1285: Wölfflin. *Archiv.* ii. 213.

hac facultate defensionis, *i.e.* 'my abilities as an advocate.' Cp. the even more apologetic phrase (in the mouth of Crassus), *de hac mea, quantulacumque est, facultate, de Or.* i. § 135.

quaeritis, *de Or.* i. § 135.

si reticuerim comprobare, *i.e.* that 'silence gives consent.'

hoc loco, 'at this point in my speech.'

quae a me desiderari arbitror, 'the argument which is, I think, expected of me,' *i.e.* by my audience. The alternative reading *quae te a me desiderare arbitror* would involve an inexplicable transition from Cluentius, (of whom it has just been said that he refused to shelter himself behind the letter of the law), to Accius the opposing counsel.

non relinquam, *i.e.* 'I shall not turn my back on it, shall not leave it unsaid.'

LV. § **150. ut ... confitear,** 'even supposing I were to allow it to be ever so unfair.' Cp. § 146.

eius modi est ut, etc., 'it only amounts to this, that we require a thorough change in our laws.' It has been suggested (by Orelli, Hartman) that *eis* (after *commutatis*) should go out, as forming a false antithesis to *his*. But there is a particular reference to *isdem legibus* in what goes before. "We require a change," Cicero says, "in those statutes which bind only certain classes, and not the whole body of our citizens; but that is no reason for refusing to obey existing laws."—Here, as again at § 158, ST give *eius modi*, as against *huius modi*, *ω*.

Deinde quis umquam hoc senator accusavit ut, etc. I retain the reading of the MSS.; most editors read *hoc ... recusavit ne* (as § 154) *cum ... putaret ... uti oportere*, or *hoc recusavit ne quo*: some also gratuitously insert *non* before *oportere*. *Quis umquam hoc senator accusavit ut,* etc., is quite good Latin for "What senator ever found fault with this, namely, that," etc. As to the latter part of the sentence, its meaning and construction will be better appreciated if it is stated independently as follows: *cum altiorem gradum dignitatis beneficio populi Romani* est *consecutus, eo se* putat *durioribus legum condicionibus uti oportere,* "When he has gained by the favour of his countrymen a higher grade of rank, he thinks that he ought to accept correspondingly more stringent (*eo durioribus*) legal restrictions." The senator, Cicero says, cheerfully accepts all the disadvantages of his lot; these disadvantages are outweighed by the countervailing advantages of office and distinction (*honoris et amplitudinis commodum*, below). Was there ever a case, he asks, of a senator declining to acknowledge the equity of this arrangement? *quis umquam hoc ... accusavit ut ... putaret?*

The only real difficulty in the above explanation is that *hoc* might as naturally have been expanded into *ut durioribus condicionibus uteretur*, in place of which is substituted, after the intervening dependent sentence, *ut se putaret uti oportere.* But such pleonasms (arising from the insertion of the verb of

thinking in the subjunctive instead of the thing thought), are common enough in *Cicero* (Roby, § 1746): cp. § 153, *non fecerunt idem quod nunc Cluentius, ut aliquid culpae suscipere se putarent.*

If any change in the text is considered necessary, I should propose to insert *is* after *consecutus*, and founding on the frequent confusion between *cum* and *qui* (*e.g.* § 40) to read *Quis umquam hoc senator accusavit ut,* qui *altiorem,* etc. ... is *eo se putaret,* etc.

durioribus legum condicionibus uti, *i.e.*, to submit himself to a greater degree of legal restraint. *Condiciones* = 'limitations' or 'restrictions': cp. below *putant enim minus multos sibi laqueos legum et condicionum ac iudiciorum propositos esse oportere,* a sentence which supplies an antithesis to *ut ... se putaret ... oportere,* of the senators, above.

compensantur, 'are counterbalanced.' So too *pensare* in Livy and Tacitus: *adversa secundis pensando,* Livy, xxvii. 40: *laetus animi quod adversa maris expeditione prospera pensavisset, Ann.* ii. 26.

Converte ... non perferent. Parataxis.

condiciones, 'restrictions.'

minus multos sibi laqueos, *i.e.* 'that they ought not to be exposed to so many pitfalls in the way of statutes, and limitations, and trials.' Faussett compares *Sest.* § 88, *legum si posset laqueis constringeret,* lit. 'entanglements consisting in laws.'

summum locum. The occurrence of *petiverunt* in what follows is generally held to be decisive in favour of this reading instead of *in summum locum*: *ascendere* is often found with a direct accusative. But Dr. Reid thinks that we have here an instance of the absolute use of *petere* ('to be a candidate'), as § 154 *petere coepisset*: cp. *in unum locum petere, in proximum annum petere,* and the like. He would therefore retain *in,* especially as *ascendere summum locum,* where *locum* has not the primary sense, is a doubtful expression.

§ 151. quibus nos tenemur ... liberati. So § 144, *dixi Habito statim eo capite ... illum esse liberum teneri autem nostrum ordinem*: also § 155, *quaestione qua se solutum liberumque esse arbitretur,* where there is a close parallel in *solutum* to the adjectival use of *liberati* here.

C. Gracchus tulit. The law under which Cluentius was being tried was originally a law of Gaius Gracchus, re-enacted by Sulla (§ 154, *quae tunc erat Sempronia nunc est Cornelia*), and embodied in his *Lex de Sicariis et Veneficis.* It is not

clear whether, as Ramsay supposes, this *Lex Sempronia* was passed before Gracchus effected the transfer of the *iudicia* from the senate to the *equites.*

pro plebe non in plebem. Cp. *populum Romanum,* immediately below: Dr. Reid points out that those words are subtly introduced (though only the *equites* are really in question) in order to pave the way for §§ 155, 156, where it is alleged that the argument of Accius threatens the whole community. See Introd. p. xxxiv.

homo a populi causa remotissimus. Contrast, for the 'opposite side of politics,' § 77, *homo maxime popularis,* 'a thorough-going radical.' *Tamen,* in what follows, = 'for all that,' *i.e.* in spite of his political antipathies.

cum ... quaestionem ... constitueret. Sulla established a *quaestio* on the basis of the law which he had revived: it does not appear whether this was an entirely new departure, or whether such a *quaestio* had already existed in some form, even under the legislation of Gaius Gracchus.

Quod, pronoun: otherwise we should have had *Quod si* hoc *fieri posse existimasset,* as § 134.

pro illo odio. Cp. on § 29, *pro vestra humanitate,* etc., 'his well-known detestation of the equestrian order would have made him only too glad,' etc.

in veteres iudices, 'on the jurors of the old *régime,*' *i.e.* the knights, who had enjoyed a monopoly of the jury-courts since the legislation of C. Gracchus. Cicero says that if Sulla could have made the law retrospective, he would gladly have done so: in this case it would have applied to the knights, who were now excluded from the privilege of serving as jurors. But he saw that only those were amenable to its penalties who actually discharged the functions of jurors under the new conditions, *i.e.* the members of the senatorial order. In other ways, however, Sulla wreaked his vengeance on the *equites,* who had resisted his measures; and Appian tells us that 1600 of them perished by his first proscription.

§ 152. nisi ut ... concludatur, 'except to involve the equestrian order in liability to the statute in question. The analogy of Shakespeare's "You stand within his danger" is more apparent than real: see on *periculum,* § 18.

qui se facile tuentur integritate et innocentia, 'whose upright and blameless character is to them a ready shield,'—they are 'strong in the consciousness of their own rectitude.' Cp. *statum ac securitatem innocentia tueri,* Tac. *Dial.* 11. So *nobilitatis dignitatem virtute tueri,* § 111.

sine cupiditate, 'free from the spirit of partizanship' or 'ambition': see on § 66. Contrast *qui sese volunt posse omnia* in what follows. This explanation seems preferable to Mr. Faussett's 'without greed': he takes the phrase as equivalent to *integritate* above.

equites ordini senatorio, etc. The union of the equites and the senate in a 'moderate' party was subsequently Cicero's own declared ideal: he thought that it had been permanently realized in his consulship. Cp. *in Pis.* § 7, *ita est a me consulatus peractus ... ut multitudinem cum principibus equestrem ordinem cum senatu coniunxerim*: *ad Att.* i. 17. 10, *tueor ut possum illam a me conglutinatam concordiam.* See Strachan Davidson's *Cicero*, pp. 164-5.

sed ii qui, etc. The majority, Cicero says, fear nothing for themselves from the statute under discussion, and they see no reason why knights of good character should fear anything either: but the selfish minority (*ii qui sese volunt posse omnia*) think to intimidate the knights if they can succeed in actually bringing them within the clutches of the law (*in huiusce legis periculum concludatur*). There may be a reference here to the senatorial leaders of the popular party, of whom the most powerful was Julius Caesar (then thirty-five years of age) and M. Crassus.

sese volunt posse omnia. After verbs of wishing, a pronominal accusative (with the infinitive) is often employed instead of the simple infinitive, the object of the will and desire being conceived as a distinct thing in itself and thus emphatically expressed. This usage is most common with a passive infinitive or with *esse*: *de Legg.* i. § 4, *ego me cupio non mendacem putari*; *ad Fam.* i. § 9. 18, *qualem me et esse et numerari volo.*

de eis qui rem iudicarent: 'those who have served as jurors,' *i.e.* even though they are not senators. The argument is technically correct, but not sound in equity. Cicero says that the effect of extending the operation of the Cornelian Law from the senators to members of other classes who might have been guilty of the offence against which it was directed (as would be done if Cluentius were held liable to its provisions) would be to place the equites on the same level as the members of the senate. But as the former now (B.C. 66) shared with the latter and a third class (the *tribuni aerarii*) the privilege of serving as jurors, they should surely, in equity, have been made to accept the responsibilities attendant on that privilege. No statute making them amenable had been passed (ch. liii. *ad init.*), and Cicero protests against the thing being done, as it were, by a side wind.

huius ordinis, *i.e.* of the knights. Cicero now addresses himself directly to the knights, whose 'class feeling' he was desirous of exciting.

hoc metu proposito, the fear, namely, of being made amenable to a statute technically applicable to senatorial jurors only.

evellere aculeum, 'to pluck out the sting' of your rigorous procedure. The idea is that the jurors will be harmless when their 'stings' have been removed: there does not seem to be necessarily any reference to the well-known fact (Virg. *Georg.* iv. 236) that bees often lose their stings, with fatal results, in the effort to drag them out of the wound they have made. For the figure cp. *pro Cael.* § 29, *quos aculeos habeat severitas gravitasque vestra.*

§ 153. de eo quod coierit aut consenserit, 'on a charge of combination or conspiracy.'

LVI. **O viros fortes:** for the acc. of exclamation, see on § 15.

M. Druso. It was in B.C. 91 that M. Livius Drusus, the son of the opponent of C. Gracchus, came forward with various legislative proposals, some of which were designed to check the corruption that had so long marked the equestrian administration of the *iudicia.* He proposed to constitute a new *Album iudicum* of three hundred senators and three hundred knights, the selected knights being probably at the same time included in the now attenuated ranks of the senate. He also sought to provide a special tribunal for the trial of such jurors as had been or should be guilty of receiving bribes. Drusus wished in fact to make the equites responsible for judicial corruption in the past (*Rab. Post.* § 13): the Sempronian law of B.C. 124 (see on § 151) must have required extension of some kind. The knights resisted: *intellegebant enim ea lege equestrem ordinem non teneri,* § 154. The measures of Drusus were cancelled immediately after his assassination.

cum illa cuncta quae tum erat nobilitate, 'with the whole aristocracy of the day,' which included M. Aemilius Scaurus, the *princeps senatus,* the orator Crassus (§ 140), M. Antonius, the augur Scaevola, Q. Lutatius Catulus, and others. The most bitter opponent of Drusus was the consul L. Marcius Philippus. All MSS. give *cum ille nihil aliud quam cum illa cuncta* = perhaps *una cum*?

ceterique eiusdem ordinis. The reading of ST is *ceterique eiuscemodi ordinis*: other codd. give *huiuscemodi. Eiusdem ordinis* is sufficiently near *eiuscemodi ordinis,* assuming a dittography, to justify its insertion in the text. Alternatively *huiusce vestri ordinis* might be suggested. Cicero is here

making a direct appeal to the knights (as one of the three *ordines* to which the jurors belonged): cp. § 152, *auctoritatem huius ordinis.*

non fecerunt idem ... ut putarent. For the constr. cp. § 137, *factum est ... ut id ... non arbitrarentur*: and see also on § 150, *quis hoc accusavit ... ut se putaret.*

repugnarunt cum haec recusarent et palam ... dicerent *Repugnarunt cum dicerent* is a very usual construction, 'they resisted, saying': commentators have found greater difficulty in explaining *cum haec recusarent et dicerent.* We might translate 'they resisted, *protesting against these proposals* and saying': but *haec* is not quite clear, and the phrase is suspicious occurring as it does immediately after *recusando,* used absolutely. Madvig (followed by Müller) makes the simple change to *reputarent,* on which reading *haec* anticipates *se potuisse,* etc. Dr. Reid proposes *refutarent*: *haec* would then = 'arguments such as Accius has used.' It is simplest to adhere to the text, and to explain *recusare* of 'raising a legal plea,' as in § 156: cp. § 154 *non hoc recusabant ne,* etc.

potuisse: see on § 133, where in direct statement the verb would have been *potuit,* as here *potuimus.* Faussett compares Juvenal x. 123, *Antoni potuit gladios contemnere si sic Omnia dixisset.*

splendor, 'prestige,' 'distinction': see on § 46, and cp. *domi splendor,* § 154.

ornamenta, 'distinctions,' as *honorum ornamenta,* § 154, below. Cp. §§ 120, 132, and the enumeration following, *locus, auctoritas,* etc.

quae se non contempsisse. *Quae* here = *et ea,* the infinitive following, in *oratio obliqua,* the relative introducing a co-ordinate clause.

invidiarum: an instance of the use of an abstract noun in the plural (with reference to individual cases).

huiuscemodi iudiciorum. After *iudiciorum,* the *editio princeps* and others insert *anfractu,* a word which seems to be without any MS. authority. But an ablative of some sort (*periculis?*) may have fallen out, or else *huiuscemodi iudiciorum* may be an adscript, based on *huiuscemodi iudicia,* § 152, *huiuscemodi quaestionibus,* § 153.

§ 154. aetatem integram, lit. 'unimpaired age,' *i.e.* the period of life when all is young and fresh.

non posset, *sc.* fieri. Cp. *ad Fam.* i. 2, 4, *nos dignitatem ut potest retinebimus.* So in comedy, *e.g.* Plaut. *Merc.* 779, *Potin' ut molestus ne sis?*

manere, *sc.* oportere

periculis: see on § 49. For this use of *carere*, 'to be free from,' cp. *Rosc. Am.* § 144, *Mil.* § 5.

insignia. There is no sufficient reason for suspecting this word, as many editors do (following Gulielmius), and also *exercitus* below (Baiter). Cp. *ornamenta,* § 132.

voluerunt. The indicative marks a transition to *oratio recta* rather than an added remark of the speaker himself: *Tusc.* ii. § 61. A similar transition has already occurred in § 141, *quod si potuisset ... non praeterisset.* See Dr. Reid's note on *de Amic.* § 45; cp. Roby, § 1797.

tunc erat Sempronia. See on *C. Gracchus tulit,* § 151.

ne nova lege adligarentur: what they were anxious about was that they should not become 'involved in the provisions of a new-fangled statute.' Cp. § 152, *ut equester ordo in huiusce legis periculum concludatur.*

§ 155. tenetur. There is a variant *teneretur.*

LVII. **quidem,** adversative, 'but': see on § 54.

a legibus non recedamus: 'let us stand by the laws.' In jussive sentences *non* is used for *ne* when (as here) the negative is to be taken as closely linked to the word which it negatives: cp. Livy, xxxv. 48. 9, *bello se non interponant*: 'let them observe non-intervention.' So *pro Cael.* § 42, *non omnia voluptatibus denegentur*: Livy, vi. 41. 10, *non leges auspicato ferantur, non magistratus creentur*: id. ix. 34, 15, *non die, non hora citius quam necesse est magistratu abieris.* In short, *non* may be used when only a part of a jussive sentence is negatived, whether that part be a word or a phrase: Tac. *Ann.* i. 11, *non ad unum [sed ad plures] omnia deferrent*; *Dial.* 13, *Non me [sed alios] fremitus salutantium excitet.* Cp. *Aen.* xii. 78, *Non Teucros agat in Rutulos,* where Professor Neddleship ssys that *non* is used, for *ne*, 'if a particular part of the sentence is to be emphasised'; Hor. *Sat.* ii. 5, 91. The whole question is discussed by J. E. Nixon, in the *Journal of Philology*, vii. p. 53. See also a paper on 'The Latin Prohibitive,' in *Am. Journ. Phil.* xv. p. 318.

illud quam sit iniquum. The thing that is unfair is indicated, in form, by the accusatives with infinitive that follow, and also in the implied thought that while all this is going on there is a danger that the people of Rome may be saddled by a new law.

aliud agere, 'is not paying any attention,' 'is quite otherwise employed,' as again § 179. This phrase belongs to colloquial usage. The opposite is *hoc agere* (to do something

intently), as frequently in Plautus, *e.g. hoc age sis nunc iam*, Bacch. 989: see Munro on Lucr. i. 41. Cp. Quint. x. 3. 25, where we are told how Demosthenes chose lonesome spots to avoid distraction, *ne aliud agere mentem cogerent oculi.* See also my note on Tac. *Dial.* 32. 5.

ipsum, in contrast to *vobis*. There is, however, uncertainty about the reading: instead of *ipsum* s gives *se* which may have arisen out of the last syllable of *commisisse*, while other MSS. omit the word altogether.

solutum liberumque. See on *quibus ... liberati*, § 151.

paucos iudices, 'a handful of jurors.'

sic, to introduce the accusative with inf. that follows: Accius 'stakes his case upon the argument that,' etc.

§ 156. disertus, 'a clever speaker,' not so high a title as *eloquens*: see on § 100.

omnes cives legibus teneri omnibus: 'that every law is binding on every citizen.' This appears to be a slight exaggeration of the real argument of his opponent. Accius had contended that the *same laws* shonld be binding on all (who came within the sphere of their operation): § 150, *iniquum tibi videtur, Acci, esse non isdem legibus omnes teneri.* But this hardly amounts to saying that every law is binding on every citizen. In the case before us, knights as well as senators, Accius urged, ought to be held amenable; for both orders now shared the administration of the jury courts. His case was that a true interpretation of the *lex Cornelia* was enough to bring Cluentius under its provisions: see on § 160. Cp. § 145, *indignum esse facinus si senator iudicio quemquam circumvenerit legibus eum teneri: si eques Romanus hoc idem fecerit non teneri.*

silentio, ablative of manner. This ablative generally occurs with *cum* when it has no epithet attached, *e.g. Fin.* iii. 8. 29, *beate vivere honeste, id est cum virtute vivere.* But some substantives early acquired an adverbial force: as *dolo, ordine, vi, iure*: to which may be added *silentio*, as here, *casu, fraude*, and some others. In post-Ciceronian Latin this usage is extended.

ea lege qua lege: for the repetition, see on § 48. Cp. §§ 62, 89, 100.

ii qui magistratum habuerunt. For the actual words of the statute, see § 148.

recusare, absolute, 'to protest': so *recusando*, § 153.

in arce legis praesidia constituere defensionis, 'to establish the artillery of my defence in the citadel of law.'

§ **157. quam infinita,** 'how unlimited in its jurisdiction': cp. § 148, *In quem quaerere? Infinitum est.*

in populum Romanum. Cp. § 151, *pro plebe non in plebem.*

incertum et infinitum, 'vague and indefinite.'

obscurum et occultum, 'mysterious and unintelligible.'

falsumve testimonium dixerit, 'or shall have given false evidence.' Cicero speaks of this provision of the *Lex Cornelia* as if it were restricted, like the Sixth Chapter, to senators and officials. "This restriction is not found in the Digest (*Marc. Dig.* xlviii. 8. 1). Probably Cicero is speaking correctly for his own period, and the jurists of the Digest speak of the *Lex Cornelia* as it was modified in imperial times. This hypothesis is rendered likely by the context in the Digest, which speaks of *deportatio* (an imperial punishment) as the penalty threatened. The original penalty under the law was *aquae et ignis interdictio*" (Faussett). On this Dr. Reid observes: "It must be remembered that while in Cicero's time perjury was not directly punishable, excepting in a special case like this, in imperial times it became directly punishable."

quis de plebe Romana, 'what Roman commoner?' *De* = 'from among': cp. § 90, and *ad Att.* viii. 1, *hominem certum misi de comitibus meis.*

T. Accio auctore, 'on the suggestion of T. Accius,' 'if Accius is to have his way.'

Nam dicturum quidem. The force of this collocation is just as if an English speaker were to say, 'As to the future, why,' etc.

§ **158. si cui forte ... facessetur, ... si is ... voluerit.** For two conditional clauses which are not co-extensive, the first being the wider, cp. on § 6, *si ... comprehendistis, si ... extorquebit.* With *negotium facessere*, cp. πράγματα παρέχειν.

omni me defensione usurum esse legis qua, etc., 'shall avail myself to the full of the technical defence which,' etc.

LVIII. **causa ... eius qui lege non teneatur,** 'a case ... affecting a person not amenable to the statute,' or in which the defendant is outside the scope of the statute.

offensus, 'objectionable': for the collocation (with *invidiosus*, 'in bad odour,') cp. § 69, *invidia atque offensio. Offendere* is to 'strike against' (§ 175), and so to be a 'stumbling block,' 'a rock of offence': *offensus* (cp. § 172) means literally 'having been stumbled against,' or 'having come into collision with,' hence 'an object of dislike.' *Pro*

Sest. § 125, *cui nos offensi invisique fuerimus*: in *Verr.* 3. 62, *invidiosum offensumque.*

religioni. For *religio* of the 'voice of conscience,' especially in connection with the oath of a juror, cp. § 121, *suae potius religioni quam censorum opinioni paruerunt*: §§ 107, 159. The gloss in ST after *Est enim sapientis iudicis* [*meminisse se hominem*] is interesting as showing what copyists were capable of.

§ 159. tantum ... quantum, 'just so much as,' 'so much, and so much only, as': *i.e.* the juror's functions are limited by the extent of his commission.

posse, of moral courage: a wise juror must have the strength of mind to acquit, must be able to 'bring himself to' (like τλῆναι in Greek tragedy) acquit, even where the defendant is the object of his detestation.

de quo reo cognoscat: 'the character of the accused whose case he is examining.'

magni ... atque sapientis, 'noble and wise.' *Magnus* of moral quality = *magnanimus*, 'high-souled.'

non se reputare. The order is, *reputare non se solum esse neque ... licere.* There is much, however, to be said in favour of the alternative reading, *non se putare esse solum.* The phrase *habere in consilio* supplies an antithesis to *solum esse*: the juror must 'take for his assessors' the law, conscience, righteousness, good faith.' For *consilium* in this sense, cp. on *adhibitis amicis*, § 33.

conscientiam mentis suae, 'the testimony of his own conscience.' For *conscientia* in the sense of 'guilty conscience,' see on § 25.

summa cum honestate vivemus, 'our lives will be in the highest sense virtuous.' *Metus* in the context = religious or moral apprehension.

§ 160. iudicem quod ei videatur, etc., 'that a juror has to decide as he thinks best, and ought not to be fettered by statutes.' Accius must have appealed to the jury to rise above the technical restrictions of the statute: to look to its spirit, not to its letter. Otherwise it would have been impossible to expect a conviction against a Roman knight for an offence which, at the time of its alleged commission, was indictable under the statute only in the case of senatorial jurors. Accius had in fact appealed to the jurors to establish a wholesome precedent by convicting Cluentius, and so making the altered and enlarged statute even retrospective in its action. Cp. Introd. xxxiii.

quae quia vestrae quaestionis erant. It is not till we get to ch. lx. that Cicero begins to deal directly with the *crimina veneni.* What follows here concerns certain charges by which the prosecution had sought to take away the defendant's character.

nihil praeter invidiam, *i.e.* the odium which the other side knew would attach to Cluentius on the ground of his connection with the trial of Oppianicus, though, as Cicero puts it, they must have despaired of getting a conviction according to the letter of the statute. See Introd. p. xxxiii.

LIX. **§ 161. Decidio Samniti,** 'Decidius the Samnite.' The resemblance in the name has induced some authorities to identify this person with *Decius Samnis,* an individual otherwise unknown, on whose behalf Caesar seems to have spoken (Tac. *Dial.* 21. 25).

dixistis. In support of this reading Müller refers to *illi* § 160; *subornatis,* § 163; *dixistis,* § 168; *dicitis,* §§ 169, 180.

in callibus, 'on the upland pastures.' *Callis* is defined by Isidor. *Orig.* xv. 16. 20, as *iter pecudum inter montes angustum et tritum, a callo pecudum tritum.* Cp. *pro Sest.* § 12, *Italiae calles et pastorum stabula*; Livy, xxii. 14. 8, *nos hic pecorum modo per aestivos saltus deviasque calles exercitum ducimus.* The MSS. have *in collibus,* which would simply mean 'on the hill-side'; but the incident in the text probably occurred on the highland pastures to which it was customary to send cattle during the heat of summer. Capes (on Livy l. c.) notes that the early agrarian laws recognized this custom by leaving a wide margin along the highways for the transit and pasturage of the cattle (cp. the modern *tratture*); and in our text the words *ut solet* indicate the frequency of the encounters between drovers to which this arrangement would give rise.

vim et manus, hendiadys: see on § 13.

rem domini et privatam possessionem, 'their master's interests and the rights of ownership. *Fest.* 241, possessiones *appellantur agri publici privatique.*

illis, *i.e.* to Ancharius and Pacenus.

§ 162. heres hic alienior institutus est: 'the defendant, an utter stranger, was made his heir-at-law.' Cp. § 135, *coheredes homines alienissimos. Alienior* is an instance of the comparative used absolutely, indicating the presence of the quality in a considerable or too high a degree: so *liberius vivere, asperius loqui.* Cp. *iucundior,* § 110: *crudior,* § 168: *occultiora,* § 194.

Habiti merito fecit, *i.e.* he only discharged an obligation to Cluentius. This construction with *merito* is the same as *e.g. meo rogatu, iussu civium,* etc. A comic superlative occurs Plaut. *Asin.* 737, *Meritissimo eius quae volet faciemus.*

infitiatum esse, 'that he refused to allow' a legacy duly bequeathed to Florus. *Infitiari* is a technical term in this connection: Juv. xiii. 60, *Nunc si depositum non infitietur amicus.* So *infitiator, de Or.* i. § 168, where Wilkins quotes Isidor. *Orig.* v. 26, *infitiatio est negatio debitae rei cum a creditore deposcitur.* Cp. Martial i. 103. 11, *in ius, o fallax atque infitiator, eamus.*

ei, *sc.* Floro: lit. 'that it was not sufficiently secured to Florus.' Cluentius thought, in fact, that Florus could not show a sufficient title to the larger sum. The insertion of figures in Roman writing was a frequent source of error: here there appears to have been a doubt whether the will said 30,000 sesterces or 300,000.

debere. Many codd. have *deberi,* and Lambinus proposed to emend *debere se.* See on *reticeri,* § 18.

uxorem ... esse repetitam, *i.e.* action was taken against Cluentius to compel him to restore the woman, whom he was alleged to have kidnapped. 'Plagium' had been made a statutory offence by a *Lex Fabia* (*pro Rab. Perd.* § 8) which is assigned by some authorities to the beginning of the second century B.C.

post bellum, *i.e.* the Social War (B.C. 91-88).

a sectoribus, 'from the brokers.' The *sectores* made wholesale purchases when property confiscated to the state was put up to auction, with the view of retailing (*secare* to 'cut') what they had bought at a profit. They would do a good deal of business at such a time as this.

sine iudicio, 'without any recourse to law.'

§ 163. calumniator, a 'blackmailer,' or professional prosecutor: cp. συκοφάντης. The general meaning of *calumnia* is the taking of proceedings against a person when the prosecutor has good reason to know that the charge alleged has no foundation in fact.

cum servis Habiti furti egit, 'brought an action of theft against the slaves of Habitus.' *Furti* is genitive of the charge.

illo privato iudicio, 'in the civil action,' viz. the trial for theft. In Roman law *furtum* was treated as a private wrong rather than as a crime: the remedy was a civil suit for damages (cp. on § 120). The reference cannot be to the

threatened *calumniae iudicium*: for *calumnia* was a *iudicium publicum.*

vobis isdem fortasse patronis: 'in which perhaps you will again act as his counsel.' *Vobis,* referring to Accius and his friends, seems preferable to *nobis*: Cicero himself had probably already been retained by Cluentius for the defence.

calumniam non effugiet: 'shall not escape the consequences of fraudulent accusation': cp. *calumniam ferre, ad Fam.* viii. 8. 1, to be convicted of bringing a vexatious prosecution. *Calumnia* is here used for *calumniae iudicium,* with consequent penalties in case of conviction, one of which penalties (under a *Lex Remmia*) was probably to have the letter *K* (the initial of *Kalumnia*) branded on the forehead (*pro Rosc. Am.* § 57). It was open to a defendant, on acquittal, to bring the *calumniae iudicium,* by which he could recover substantial damages. See *Dict. Ant.* s.v. *Calumnia.*

hominem multorum hospitem: 'person greatly given to hospitality.' The alternative reading *hominem multorum hospitum* (genitive of quality) would give the same sense: but the statement that Ambivius is the "entertainer of many," seems appropriate as more nearly anticipating the words *si invitaverit id quod solet,* below.

coponem de via Latina: 'an inn-keeper on the Latin way.' *De* is used of the source or abode from which: cp. *Or.* § 47, *non enim declamatorem aliquem de ludo aut rabulam de foro ... quaerimus. Copo* (*caupo*) contains the same root as κάπηλος.

etiam nunc: a frequent collocation in Cicero, *e.g. Sex. Rosc.* § 77; *Sest.* § 94.

si invitaverit: 'if he invites us, after his usual fashion, we shall give him so warm a reception that he will regret having gone out of his beat.' For this colloquial use of *accipere,* cp. Plaut. *Aul.* 4. 4. 3, *ego te miseris iam accipiam modis.* There is a *double entendre* throughout, the words being chosen with special reference to the trade of an inn-keeper. 'If this entertaining person gives us an opening (*i.e.* really brings his action, and asks us to 'come on') we shall give so good an account of him (*sic hominem accipiemus, i.e.* in defending the action), that he will regret having left his ordinary line of business.' *Accipiemus* does not necessarily point to a 'turning of the tables' between host and guest, though it would be possible to render, 'If in pursuance of his calling he gives us an invitation, *we* shall entertain *him* in such a way that he will regret ever having left the high road.' *De via decessisse* may contain a reference

to *de via Latina* above: 'having left the Latin Way—to come to Rome.' For a similar expression, cp. *Cael.* § 38, *se nulla cupiditate inductum de via decessisse*; Plin. *Ep.* i. 2. § 4, *paulum itinere decedere.*

§ **164. annos octo meditati**: 'after eight years' preparation.' Cp. Sen. *Ep.* 20. 12, *cum vero multo ante meditatus accesseris*: Cic. *de Or.* i. § 147, *praediscere ac meditari*: *ib.* § 260, *meditando* by practice and 'rehearsals.' So in rhetoric *meditatio* = μελέτη.

quam levia genere ipso: 'how essentially trivial'! Cp. *de Or.* ii. § 109, *genere ipso doctrinam redolet*: *ib.* § 306, *genere ipso remotum ab usu iudiciorum*: *Brut.* § 100, *ipso genere dicendi durior.*

quam brevia responsu: lit. 'how short in the replying'! *i.e.* how little it takes to dispose of them. *Responsu* is the 'ablative of the point of view from which,' the 'ablative supine.'

LX. **oneris**: partitive genitive. Cp. *onus suscipere*, of incurring responsibility, § 142.

de criminibus veneni: epexegetic of *id.*

ad vestrum iudicium minime pertinerent. Tr. "Though your court has really no concern with them." This gives the antithesis to *quod vestri iudicii est* above (cp. § 2, *quae propria est iudicii vestri*). In dealing with a member of the equestrian order, the court was concerned only with the *crimina veneni*; but Cluentius was so anxious to clear his character that Cicero was instructed to reply even on these trivial side-issues. This passage completes the transition begun in § 160 (*quae quia vestrae quaestionis erant*, etc.); see Introd. p. xxxii.

pertinerent: for the sequence, see on *condemnaretur*, § 148. Cp. *adferret*, § 168, *sublevarent*, § 195.

§ **165. Cappadocem.** This cognomen occurs in two inscriptions, *C. I.* ii. 224, p. 28, and *ib.* 3903 a., p. 524. It does not follow, however, that Vibius was an Asiatic: Mr. Faussett surmises that the surname may have been given to him on the ground of some exploit in the Mithradatic wars. Vibius is said to be a Samnite name: there was a Sex. Vibius at Larinum, § 25.

hospes: 'guest-friend.'

At heres est Cluentius. I see no good ground for rejecting these words, though they do not occur in the best MSS. Accius and his friends are represented as fastening on the words *est mortuus*, which Cicero has substituted for *veneno esse sublatum*: they rejoin, in effect, 'That's all very

well: but his estate goes to Cluentius' (cp. '*At repentina morte periit*,' § 173). Cicero replies by indicating the absence of any motive for poisoning: Vibius had died intestate, and his client did not benefit. The MSS. give *Aut heres est* for *At heres est*: and Mr. Faussett thinks *at* an emendation of an original *haud*, the words *Haud heres est Cluentius* having been interpolated by a copyist who thought the transition from *est mortuus* to *intestatum dico esse mortuum* abrupt. This is also Classen's view, but it does not appear to be so probable.

possessionemque, etc., 'and that the use and enjoyment of his estate was, in accordance with the praetor's code, assigned to Numerius Cluentius.' Here *possessio* is used of something short of full ownership.

ex edicto praetoris. On entering office, the praetor issued a statement of the legal principles on which he proposed to base his administration. In the main, each praetor adopted, with modifications and additions, the edict of his predecessor; and thus the *edictum perpetuum*, or *tralaticium* came to be a standing body of civil law.

huic, deictic, like *Oppianico huic adulescenti*, below.

illius sororis filio: 'my client's sister's son.' The sister was probably Cluentia, who divorced herself from A. Aurius Melinus (§ 14). Mr. Faussett suggests that there may have been subsequently an issue of the marriage, and that the child, instead of being called Aurius, took his mother's *nomen*, and the *praenomen* of the sons of Dinaea, his father's kinswoman.

§ 166. eius in nuptiis: 'at his marriage,' *sc.* to Auria, the daughter of Aulus Aurius Melinus by Sassia (§ 179).

id cum daretur ... intercepisse, *i.e.* the poison was being administered (impf. of attempt) in a cup of honey wine, but the wrong man got hold of the potion.

bibisse. The occurrence of *que* in the last item of a triple enumeration (*statimque*) is no ground for rejecting *bibisse*, though the sentence would run equally well without it. The usage is more idiomatic when the points of the enumeration are co-ordinate, as *statu dignitate commodisque omnibus*, § 196, Madvig, 434, *Obs.* 1.

pluribus verbis dicerem. Quintilian (ix. 2. 48) omits *verbis*, but this is probably a mere accident: cp. § 164, *quam paucis verbis*: § 58.

§ 167. cum ille ... potuerit, huic autem ... non possint: 'since, as regards Oppianicus (*ille*), it has been impossible for

him even to open his mouth during the present case, whereas, with regard to Cluentius (*huic autem*), he cannot possibly want for accusers so long as his mother is alive.' Oppianicus junior, Cicero says, was by no means so formidable a person that Cluentius should have wished to make away with him : while there would always be others. The argument is, as again at § 169, that there was no motive for the crime.

An ut de causa eius, etc. *An* introduces an alternative (§§ 60, 136): if it was not fear that prompted the alleged attempt at poisoning, was it infatuation? *An (hoc fecit) ut ... accederet? Eius* is difficult. It has been proposed to take it with *periculi* in the sense of 'the danger of the former prosecution' (for poisoning Oppianicus the elder). If it were not for the antithesis *de causa ... ad causam*, we might confidently construe *de causa eius*. On the whole, looking to the analogy of *huiusce periculi*, § 117, *sine huius periculo*, § 118, I incline to take *eius* as masc., and to translate (literally) "was it that while nothing of the risk to Cluentius should depart from the case, there should be added to the case a new charge."

illa frequentia: ablative of circumstance. For the omission of the preposition (found in many MSS.) cp. *Leg. Agr.* ii. § 55, *hac vestrum frequentia*, and such common phrases as *summa hominum frequentia*, *tanto conventu hominum et frequentia*.

quae ... interceptio poculi? 'What was this stoppage of the cup on its way?' *i.e.* What about it? What are we to make of it?

non committam ut videar, etc. 'I shall not make the blunder of giving the impression that I have hinted at more than I am prepared to state.' Cp. the use of the figure 'Omission,' § 99.

§ 168. omnino : cp. on § 60.

magnum crimen, is explained as meaning 'a monstrous (μέγα) accusation.' But we should expect the phrase to mean rather 'a serious charge': cp. *maioribus criminibus*, § 9, *crimen tantum ac tam manifestum*, § 50. On the whole, it seems to me that *crimen* (which is found only in ST) is doubtful here.

crudior : 'suffering from indigestion': an absolute comparative, like *alienior*, § 162. So *crudi tumidique lavemur*, Hor. *Ep.* i. 6. 61 : cp. *Sat.* i. 5. 49. Cic. *de Orat.* i. § 124 : *Juv.* i. 142. The word properly means 'raw,' and is connected with *cruor*, κρέας, etc.

ut aetas illa fert: 'as young men like him will do': *fert* 'bears' or 'tends,' as *ut mea fert opinio*, § 46. Cp. *Brut.* § 160, *senior, ut ita dicam, quam illa aetas ferebat, oratio*: *ad Qu. Fr.* i. 4. 5, *ad me, ut tempora nostra, non ut amor tuus fert, vere perscribe*: *de Or.* ii. § 13, *ut ipsorum usus ferebat.* So with *consuetudo, natura, fortuna*, etc.

tum: 'on the occasion referred to.' *Tamen* is an interesting variant: 'notwithstanding the state of his health.'

inquam, in a repetition, as §§ 12, 65, 125, 168.

ex illo loco, lit. 'from yonder benches,' *ex subselliis accusatorum*: 'on the other side.' Contrast § 54, *hoc ipso in loco.*

pertenuis suspicio: 'the shadow of a suspicion': cp. *ulla tenuissima suspicione*, § 137.

quod recita. These words are addressed to the clerk of the court.

nisi molestum est: 'if it is not troubling you,' a polite form of request, 'if you will be so good.'

quod fuit viri optimi: appositional to the clause *fecisti ut ne cui ... adferret.* For *facere ut*, cp. §§ 111, 137, 153. So also § 10, *faciendum est mihi ut exponam.* *Ne* is of course quite common with *facere, efficere.* For *ut ne*, cp. *Verr. A.P.* § 25, *fecit animo libentissimo populus Romanus ut cuius divitiae me de fide deducere non potuissent ne eiusdem pecunia de honore deicerer.* Here *ut ne* expresses purpose, design. See Reid's note on *pro Sulla*, § 27. The form of the sentence (*ut ne cui*) makes the use quite intelligible in the text: cp. Val. Max. 8, 14, 3, *quo effectum est ut ne quis dubitaret.* For *ut ne* consecutive, cp. *Fin.* ii. § 24: *pro Mil.* § 31. See *Reisig-Haase* § 580 sq. (p. 468).

adferret: for the sequence, cp. *pertinerent*, § 164: and see on *condemnaretur*, § 148.

LXI. **§ 169. initio**: cp. on *ab initio*, § 138. For the reference, see § 18.

inter eos. The words seem to come in quite naturally, and their absence in ST is not an adequate reason for excluding them from the text. On the other hand, *eos* in the line below seems rather superfluous: perhaps it has dropped out of place, the similarity between *inimicitias* and some contracted form of *enim inter eos* having given rise to the derangement.

§ 170. tantum in se facinus suscipere: 'to undertake so heinous a crime.'

eiectum e civitate: 'banished the country': *civitas* = the body of *cives.* For the banishment of Oppianicus, cp. § 175.

exsulis: 'an outlaw,' who could take no part in any legal proceedings.

damnati: genitive after *illam* (vitam), 'the life of a felon, an outlaw, a leper.'

propter animi importunitatem, *i.e.* because he was an inhuman scoundrel; so § 195. For *importunus*, cp. on § 12.

recipere tecto. Roby quotes (1174, cp. 1177) *Livy*, xxvi. 25, *Conjurant, qui victus acie excessisset, eum ne quis urbe, tecto, mensa, lare reciperet* for this use of the ablative of place regarded as the means: so also *oppido, portu, aliquem recipere*, though of course the acc. with *in* is also usual. Cp. § 41, *nemo illum aditu ... nemo convivio dignum iudicavit.*

§ 171. mortem ... quod ... erat perfugium. For the attraction see on *haec*, § 34.

in eius modi dolore: 'in like affliction': cp. on § 13.

vellet, potential: 'what motive could an enemy have had for,' etc.

nunc: 'as it is': § 120.

ad inferos, *sc.* deos: 'in the nether world.' *Ad* is used, for *apud*, as in the passage quoted from *Phil.* xiv. 32, below, *ad inferos poenas parricidii luent.* So *ad urbem* 'in the neighbourhood of the city.'

reliquisse. This construction, generally explained as an instance of attraction, is the usual one in Greek. Cp. on § 138: and add to the instances there quoted, *ad Fam.* ii. 16, 3, *nonne tibi adfirmavi quidvis me potius perpessurum quam ex Italia ad bellum civile exiturum* (for *quam ... ut exirem*).

uxorum. Cp. on § 125.

Poenis: 'the avenging furies,' the Erinyes.

sedem ac regionem, hendiadys: Tr. 'The place where malefactors have their home.' Cp. *regionis illius et vicinitatis*, § 11, and see on § 13.

Quae si falsa sunt: *i.e.* the *ineptae fabulae*, the popular legends which had been allowed to gather round the idea of a future life. To show that Cicero was no disbeliever in the immortality of the soul, it is enough to remember the striking passage, *ad Att.* x. 8. 8, *Quamquam tempus est nos de illa perpetua iam, non de hac exigua vita cogitare.* In the *de Senectute*, and in the *Tusculan Disputations*, Book i., he states the arguments of Plato on behalf of a future state; and the *Somnium Scipionis* (in *de Repub.* vi.) concludes with an allusion to the rewards to be enjoyed after death by those who have been faithful servants of their country in this life. Compare, too, his eulogy of Servius Sulpicius in the Ninth

Philippic, especially the beginning of ch. vi. The language of the text, which expresses the Epicurean view embodied in the Third Book of Lucretius (see especially iii. 830), resembles that which Sallust put into the mouth of Julius Caesar, *Cat.* li. § 20, *de poena possumus equidem dicere, id quod res habet, in luctu atque miseriis mortem aerumnarum requiem non cruciatum esse, eam cuncta mortalium mala dissolvere, ultra neque curae neque gaudio locum esse*, with which should be compared what Cicero says, in reference to the same debate, in *Cat.* iv. § 8, where he refers to the traditional view of punishments in the lower world as fabulous: see also the rationalizing explanation of the story of the Furies of Orestes in *pro Sex. Rosc.* § 67. We may also cite the language of *Phil.* xiv. 12. 32, *illi igitur impii quos cecidistis etiam ad inferos poenas parricidii luent; vos vero, qui extremum spiritum in victoria effudistis, piorum estis sedem et locum consecuti.* For a limited view of immortality, see *pro Rab. Perd.* § 29.

mors eripuit. The order seems more probable, though recent editors prefer *eripuit mors.* In some MSS. *aliud* is inserted (*mors eripuit aliud*, S: *aliud mors eripuit*, FM), just as in § 25, 5, where the suggestion is made, in a similar context, that *alios* may have originally been the sign of a various reading. Here the superfluous *aliud* may have been written in above the line in such a way that it might be taken in by copyists either before *mors* or after *eripuit.*

LXII. **§ 172. atque adeo**: 'nay more,' see on § 79.

offensiorem: see on *offensus*, § 158.

potissimum, with *ei*: was it likely that he would choose —Asellius above all others?

pietate: 'by loyalty to your father's memory': cp. *tacita pietate*, § 65.

Habiti exemplo. Cicero means that the younger Oppianicus ought to have taken a leaf out of his client's book: Cluentius had begun by impeaching Scanander and C. Fabricius, by way of reaching the *princeps atque architectus sceleris*, § 60.

§ 173. Num latius potuit, etc. The vulgate gives *Faciliusne potuit quam in poculo, latius potuit abditum*, etc., in construing which the words *in venas atque in omnes partes corporis permanare* must be taken with each term of the sentence *Faciliusne potuit...latius potuit ...celerius potuit.* But this is not so satisfactory as if each clause had stood by itself, *e.g.* Faciliusne potuit *in pane dari* quam in poculo, latius potuit ... panis *dissipari*, celerius potuit ... *permanare.* And apart from the remarkable form of the sentence, as it stands

in the traditional text, the repetition below of *facilius fallere in pane ... quam in poculo* is intolerable. I therefore reject *Faciliusne potuit quam in poculo* as a gloss, in which the gist of the passage was summarised by some early commentator (cp. on § 72): *num* may be considered as recovered from the last syllable of *venenum* in the preceding sentence. This suggestion may be held to derive some support from the words *de hoc* in the edition of Sylvius: *Faciliusne potuit quam in poculo de hoc latentius*, etc., probably a reference to some authority on the general question.

latius, *sc.* in venas ... permanare: Tr. 'Could the drug have diffused its effects more widely when hidden in a bit of bread than if it had been entirely dissolved in a liquid?'

celerius ... comestum quam epotum: 'more quickly when taken in food than when taken in drink.'

facilius fallere (*sc.* **potuit**) **in pane, si esset animadversum,** etc. This is an added question. 'Would it have more easily escaped detection (if the attempt were noticed) in the bread than in the draught?' *Si esset animadversum* is awkward: the explanation generally given is, "if the attempt were noticed," *i.e.* if suspicion were aroused and an investigation ensued. Dr. Reid proposes instead *si esset maxime dispersum*, 'however much it might be scattered about in the bread': for *si ... maxime* he compares *Cat.* i. § 29. Hartman (Mnemosyne, xxii., p. 429) deals more drastically with the whole passage, and would read, *Faciliusne latere potuit abditum aliqua in parte panis* quam si totum ... celerius potuit ... facilius fallere in pane si esset *admixtum*, etc. In defence of his reading, he says: "In pane venenum aut abditur in aliqua parte aut *admiscetur*, in potione vero totum *colliquefactum confunditur.* Venenum autem in pace abditum, si non deprehenditur, *latet*; si farinae fuit admixtum, *fallit.*"

§ 174. propter multorum eius modi casum, lit., 'on account of the similar fate of many,' *i.e.* owing to the frequency of such occurrences. I should prefer to read, however, *propter multitudinem eius modi casuum.*

in eo ipso: 'in that very matter,' *i.e.* the statement that Oppianicus died suddenly.

§ 175. undique exclusus, *i.e.* finding himself everywhere tabooed. Cp. *deserti ab omnibus*, § 170.

in Falernum, *sc.* agrum. The Ager Falernus was a district in the N. of Campania, lying between the Massic hills on the borders of Latium and the river Vulturnus. It was here that the choicest wines of ancient Italy were grown (Horace, *Odes*, ii. 3. 4; iii. 1. 41).

quodam colono, homine valenti: 'a certain lusty yeoman.' Participles used as adjectives usually have the *i* termination in the ablative.

vir dissolutissimus, *i.e.* her husband with all his looseness.

incolumi fortuna pati posset: 'could have put up with had his fortunes been unshaken,' *i.e.* before he came down in the world.

servulus: 'a favourite slave.' The dininutive here has the force of an endearment: contrast *muliercula*, § 37.

percuriosus et minime mendax, tr. 'an admirable detective and no liar': so *servus non incallidus*, § 47, 'no fool.'

huc ad urbem: 'to the neighbourhood of Rome.' As an outlaw, he could not enter the city.

aliquid conducti: 'some hired lodging,' partitive genitive: something in the shape of a hired dwelling. See note on *hoc consilii*, § 71. *Conducti* is a participle here: but the word was used also as a noun: cp. Sen. *Ben.* vii. 5, 3, *nec conductum meum, quamquam sis dominus, intrabis.*

homo infirma valetudine: 'in bad health as he was.'

latus offendisse vehementer, lit. 'to have struck his side heavily' (on the ground), *i.e.* to have bruised himself terribly.

cum febri: 'in a fever': so *de Or.* iii. 2. 6, *cum febri domum rediit: ad Att.* vi. 9. 1.

mortis ratio: the 'manner' or 'circumstances' of his death. Cp. *ratio vitae*, § 42.

LXIII. **§ 176. Sassia.** There is no reason for bracketing the name, with some editors: *nefaria mulier* is in apposition, just as *homo infirma valetudine*, § 175. Tr. 'like the abominable woman that she is.' **Quaestionem habere** implies examination under torture, like *quaesituram esse* below, and at § 182.

quasi ut idem faceret, etc. 'ostensibly with the same design as Habitus': § 47, *quo facilius aut comprehenderetur res eius iudicio aut falsa esse cognosceretur.*

quaesituram esse: 'she would have him examined under torture.' For the omission of the pronoun, see on *posse arbitrati sunt*, § 36, and cp. on § 100; see also Reid's note on *Acad.* i. § 18.

nimium loquacem: 'too communicative: § 175, *multa dicitur domino renuntiare solitus esse.*

puer. He would be at this time about eighteen.

Advocantur amici. Cp. on § 33, *adhibitis amicis.*

omnibus rebus ornati: 'with every honourable recommendation.' For the significance of this admission that (in spite of the language used in § 170) the friends of Oppianicus and Sassia were persons of character (*honesti*) with 'every virtue, every grace,' see Introd. p. xvi.

et spe et metu: 'promises and threats.' So § 47, *spe et pretio*: § 191, *sollicitationes servorum et minis et promissis.*

auctoritate advocatorum: 'it was the moral support of the witnesses (see on *advocabat*, § 54) [and the intensity of the torture] that led them to hold by the truth.' For *auctoritas*, see on § 57. The words *et vi tormentorum* occur in all MSS., but are rejected by many editors. I have bracketed them, believing that they have all the appearance of an interpolation by a copyist who had read accounts of similar investigations: *e.g.* Tac. *Ann.* xiv. 60, *Actae ob id de ancillis quaestiones, et vi tormentorum victis quibusdam ut falsa adnuerent plures perstitere sanctitatem dominae tueri.* It must have been matter of common experience that torture on such occasions induced obstinacy: Tac. *Hist.* i. 3. *contumax etiam adversus tormenta servorum fides*: *Ann.* iv. 29, *etiam si tormenta pervicacia servorum contra evenissent.* But while this would explain the insertion in the margin of a grim note like *et vi tormentorum*, it is difficult to believe that Cicero would have shown such questionable taste as to couple the phrase with *auctoritate advocatorum.* He really meant his hearers to understand that it was their reliance on the moral support of the *advocati* that induced the slaves to stand firm, it was this, in fact, that secured the adjournment of the first inquiry (*quaestio ... dimissa est*, § 177), and afterwards finally put an end to the examination (*quibus finem aliquando ... amicorum auctoritas fecit*, § 191). But Cicero could hardly, in this context, have perpetrated such a παρὰ προσδοκίαν as is implied in the words *et vi tormentorum*: while, if he had intended to conjoin two factors so dissimilar, he would probably have said '*et* auctoritate ... *et* vi.'

§ 177. Quaestio illo die = Et illo quidem die quaestio, etc.

de integro. *De* here indicates the 'basis' or 'starting-point' (Roby, 1907): so *Verr.* ii. § 139, *Censores dicit de integro sibi creari placere.* Cp. *de industria, de improviso.* In the same way should be explained *de amicorum sententia*, two lines above: cp. *de Oppianici sententia*, § 55.

Adversari, hist. inf.: the witnesses expostulate. The alternative reading *aversari* must be rejected as not Ciceronian: *in Verr.* ii. § 187, the true reading seems to be *versari* (haerere homo, versari, rubere). The word is found, however, in Tac. *Dial.* 20, where it seems to be used absolutely.

Ea ... procedere: this acc. c. inf. depends on *furere*: Sassia is 'beside herself with rage at the utter miscarriage of her designs.' Cp. *ad Qu. Fr.* ii. 1. 3, *furebat se a Racilio contumaciter inurbaneque vexatum. Procedere* is common in the sense of 'turning out well,' or as we say colloquially "coming off": cp. *προχωρεῖν*.

cum iam tortor atque essent tormenta ipsa defessa. Nägelsbach[8], p. 638, points out the latent chiasmus here: = *cum iam tortor esset atque essent tormenta ipsa defessa.* See his instances.

constitutum est satis videri: 'it was unanimously resolved that, in the opinion of the witnesses, the inquiry had gone far enough.' *Videri* (as again in § 182) gives the actual wording of the verdict: cp. *in Verr.* 5, § 14, *Fecisse videri pronuntiavit*, 'he declared him guilty in his opinion.'

§ 178. Larinum. We learn from § 184 that the investigation took place at Rome.

ad quem ... perveniret = cum ad eum ... perveniret.

non modo ... sed ne quidem: see on § 9.

importuna: see on § 12.

quae ... simulasset: 'though she had pretended.'

instructam ... et ornatam: 'furnished and stocked.'

LXIV. **velle atque optare**: 'ready and eager.' Dr. Reid says that *optare* is not 'to set one's heart on a thing' (Faussett), but to desire something which one can only obtain by great good fortune. The difference between this and *struere et moliri*, where the element of personal exertion comes in, is obvious. The process of *velle atque optare* can go on, as it were, in an arm-chair. Cp. § 188, *voluerit, optaverit, cogitaverit, effecerit.*

§ 179. Q. Hortensio Q. Metello consulibus, *i.e.* in B.C. 79. We may infer from this that the death of Oppianicus took place in B.C. 72, two years after his conviction. In the text *Q.* was inserted before *Hortensio* by Orelli.

aliud agentem, tr. 'when he was quite indifferent,' and when nothing was further from his thoughts: see on § 155.

ex genero, *i.e.* by A. Aurius Melinus.

posset is not the reading of the MSS., which give *possit*: this would have to be explained on the principle of 'vividness.'

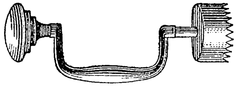
Strato ille medicus: "Doctor Strato."

nummorum ... auri: 'coin ... bullion.'

auri quinque pondo, 'five pounds weight of the bullion.' *Pondo* is a heteroclite ablative from *pondus*, which was originally used in construction with *librae*: e.g. *auri quinque libras pondo*, 'five pounds in weight (abl. of respect) of bullion.' When *librae* was dropped out, *pondo* came to be used as if it were an indeclinable noun.

§ **180. in rebus minutis**, 'among other small effects,' 'among the sundries.'

aduncam ex omni parte dentatam et tortuosam ... serrulam: 'a sort of circular saw, with teeth all round it, and crooked.' The word *dentatam* has been preserved to us by Priscian (iii. 7. 42): *dentum* SF, *dentium*, T. *Dentatam et tortuosam* is no interpolation, as has been supposed: such appositional additions are common in Latin, *e.g.* Livy, ix. 2. 7, *saltus duo alti, angusti silvosique, sunt.* This saw has been the subject of some discussion; see Prof. Davies, *Hermathena*, ii. p. 401; Faussett's note *ad loc.* (with diagram); and *Classical Review* (1889), p. 374 (S. G. Owen), and p. 469 (W. Y. Faussett). Mr. Owen's diagram may here be reproduced. He says, in explanation, "I believe that the saw was a round saw, shaped like a tea-cup inverted, which worked on the bottom of the chest by means of a handle moving on the principle of a brace-and-bit."



a coactoribus, 'from the collectors.' These men were employed as agents to collect the money due by those who had made purchases at sales by auction. It is interesting to remember that Horace's father was employed in this capacity (*Sat.* i. 6. 86).

Hoc initio suspicionis orto: 'suspicion having been aroused in this way.' For the pleonasm (very common in Latin in phrases containing the idea of 'beginning') cp. Ter. *Hec.* iii. 2. 16: Caesar, *B.G.* v. 26: Tac. *Hist.* i. 39. 76: iii. 14. 44: *Ann.* i. 31, ii. 1 (Gudeman on Tac. *Dial.* xi. 8).

rem omnem indicavit, 'made a clean breast of the whole matter.'

§ **181. An hoc dicitis.** Cp. on § 65.

Cui probatis, lit. 'to whom do you make good your story,' *i.e.* Tell it—to the marines!

potuistis, lit. 'What is there less probable that you could have brought forward,' *i.e.* You could not have told a more unlikely story. For *potuistis* Madvig proposed *possitis*, which Mr. Faussett adopts: if the mood is wrong, perhaps *potuissetis* might be considered. But, as Dr. Reid remarks, "we cannot get rid of all the examples which Ciceronian MSS. present of the indicative in relative consecutive clauses; while the tense seems to yield a satisfactory meaning."

Atque etiam, 'Yes, and what is more.' Cp. § 71, *ad fin.*

postea, cum. This is the reading adopted by most edd. for *postea quam* of the MSS. *Postea* by itself gives a good antithesis to *primo*, and *cum* (*quom*) is often, as here, confused with *quam* in MSS. (§§ 68, 72, 192). But some recent authorities would prefer *postquam* with the subjunctive (E. Hoffman, *Zeitpartikeln*, p. 46 *sqq.*).

LXV. **§ 182. agitata denuo**, lit. 'being set on foot afresh.' Tr. 'The examination by torture was recommenced.'

credo, ironical.

Itane tandem? derisive, 'Is it possible?'

habuisset ... conata est. I reject the reading of ST (*habuisses ... conata es*) which must have been an afterthought of some copyist. It is difficult to believe that in so involved a period as we have here, the orator intended to address a direct apostrophe to Sassia. And the occurrence of the clause *ne colonum forte adfuisse dicatis* within the limits of the period is obviously inconsistent with such an apostrophe.

morbo ... scelere, causal ablatives: 'distraught now by bloodguiltiness in place of mental distemper.'

colonum: §§ 175, 185.

§ 183. ab hoc, 'by Accius.' From the sentence at the end of the section (*quod tum Sassia dictitavit*) it would appear that Sassia had made this statement, though Accius had not availed himself of it for the defence.

multorum improbitate. Tr. 'by an unscrupulous combination.'

ii qui ad fraudem callidi sunt, 'cunning rogues.' *Ad* here = in respect of: cp. such phrases as *facilis ad intellegendum, ad has res perspicax*, etc., § 67 *homine ad excogitandum acutissimo, ad audendum impudentissimo, ad efficiendum acerrimo.* So also Livy, ix. 16, *invicti ad laborem corporis fuit*: Plaut. *Merc.* 630, *Ad mandata claudus.*

eminet ... atque proiecta est, 'is conspicuous and prominent.' There is the same collocation in the *De Repub.* iii.

§ 11 (Nonius) *iustitia foras spectat et proiecta tota est atque eminet*: cp. *pro Domo*, § 115, *videte ... audacia cum proiecta quadam et effrenata cupiditate.*

a consiliis ... deseruntur. See on *a tribunicia voce*, § 110.

confidens: 'self-reliant.'

An id actum non est in quaerendo ? 'Was not this the subject of the inquiry?' Cp. *quid agatur*, § 148, 'the nature of the issue involved,' rather than the frequent phrase *id agi ut*, §§ 145, 147. *Id*, in fact, =*furtum*.

tum ... isdem in tormentis, *i.e.* on the self-same occasion.

Stratonem ... dixisse. More regularly the sentence would have run, *An, cum de furto quaereretur, tum Strato dixit de veneno ?* The interposition of *id quod vobis dicendum est* accounts for the accusative and infinitive.

§ 184. En hoc illud est: τοῦτο ἐκεῖνο, 'Here you have an instance of what I have been saying.'

abundat ... deficitur, 'has audacity enough and to spare, but is wanting in prudence and tact.' *Consilio* is abl. of instrument: cp. *a consiliis ... deseruntur* above.

tabellae quaestionis, 'minutes of the depositions extorted at the inquiry.'

tum obsignatas, 'sealed up by the witnesses (*i.e.* witnessed and sealed) at the time.' Cp. § 37.

in quibus tabellis. Cp. on *causa ... in qua causa*, § 49.

orationem Stratonis: Strato's 'deposition,' or 'utterances.'

dictum, substantive. The variant *aliquid adiungere dictum* suggests the possibility that *dictum* may be a gloss, and that the true reading is *aliquid adiungere de veneno quod*, etc.

videretur. Some editors place a mark of interrogation at the end of this sentence. But so far Cicero is only making statements: the *tabellae* were not only a fraud, but a clumsy fraud: the questions come afterwards (§ 185).

§ 185. et eo furto, 'and that too a theft which,' etc.

eo loco quo debuit, *i.e.* when one might have expected him to do so, under torture, that is to say *statim*.

LXVI. **hanc fictam quaestionem conscripsisse**: 'forged the record of the inquiry.'

qui obsignarit, 'who witnessed and sealed' the depositions. Baiter's conjecture, which is adopted in the text, rests mainly on the occurrence of *nominatim* in ST. It might be

argued, however, that the assonance with *nominari* at the end of the sentence is in favour of the traditional *dicite quis obsignarit: unum aliquem nominate.*

eius modi hominem quem: *i.e.* the 'colonus' (§ 182).

§ 186. periculum capitis, 'a capital charge.'

indicium sceleris, 'a criminal information.'

fortunas alterius litteris conscriptas: lit. 'the status of another written out in a document,' *i.e.* on a bit of paper, as we should say (cp. *hanc fictam quaestionem conscripsisse*, above). Tr. 'A written instrument involving another man's status.' *Fortunae* here = *incolumitas*: *Planc.* § 31, *in dimicatione fortunarum*, *Fam.* vi. 10, 2, *aditus de tuis fortunis, id est de tua incolumitate agendi.*

adferas ... neque ... nominabis? 'Are you to bring—without naming?'

hi tales viri, 'this honourable court'; see on § 3.

Esto: 'But enough; the depositions have no weight.' *Esto* does not indicate a concession here,—a misunderstanding which has led to gratuitous conjectures, such as *aliquid* or *non nihil est auctoritatis*: it denotes that the subject is being dismissed in favour of *ipsa quaestio*, the inquiry apart from the depositions.

istis hominibus, ablative, "What became of them?" Cp. *Quid hoc homine faciatis? Verr.* 2, § 40: *Sest.* § 29: *pro Leg. Man.* § 59. This is a form of the instrumental ablative: 'What is one to do *with* him?' *i.e.* what use can one put him to? The usage is common in Plautus and Terence, as well as in Cicero: Plaut. *Cas.* 5, 4, 6, *quid fecisti scipione?* On the other hand there is the use of *facere*, with a dative: see on § 134, and cp. *Caec.* § 30, *Quid huic tu homini facias?*: *ad Att.* vii. 3, 2, *Quid enim tibi faciam?* Hor. *Sat.* i. 1. 63, *quid facias illi*: Plaut. *Amphit.* 459, *Vivo fit quod numquam quisquam mortuo faciet mihi.* This is a form of the *Dativus Commodi* (or *Incommodi*, § 53), where the person is regarded as the object rather than as the instrument of action. Somewhat analogous is the difference between *e.g. assuetus labore*, and *assuetus militiae.*

§ 187. Nam Stratonem quidem: 'As to Strato, I have to inform you (*scitote*) that,' etc. The implication in *Nam* is, 'I did not mention Strato, for——.'

conscientiam. See on § 25.

servuli. The diminutive is not endearing (as § 175) but disparaging (as *mulierculam*, § 37).

§ 188. quod hoc portentum, *sc. est*: 'What a prodigy have we here!'

in ullis locis, *sc. dicamus esse*: 'Where in the whole world can we point to such a monster of iniquity, such a hateful and horrible abomination?' *Monstrum,* of something unnatural, or preternatural, *pro Rosc. Am.* § 63: for *scelus,* see on § 34, *sceleri Oppianici.*

principio: see on *ab initio* § 138.

voluerit, optaverit: see on § 178.

libidinis iniuriam, 'the wrong done by her passion': 'her outrageous amour.'

alteris: of Sassia's *second* marriage, leaving out of count her original union with the elder Cluentius.

quarum ... obsides, *i.e.* when he had given her his children's lives in pledge for it.

in ... luctum ... funus. The preposition expresses result. So in later Latin of the effect intended: *e.g. Vell.* ii. 41, *Semper et somno et cibo in vitam, non in voluptatem utebatur. In privignorum funus* is difficult to translate: it cannot be rendered 'she signed the death-warrant of her stepsons' (Fausset), for the boys were already dead. Say perhaps that by this marriage Sassia 'plunged her new home in mourning for the death of those who should have been her stepsons.'

cum ... cognosset, 'though she knew that it was Oppianicus who had,' etc.

domum sedemque, one of Cicero's double phrases: a 'habitation and a home.' See on *manibus et gremio,* § 13.

spolia fortunarum, 'his despoiled estate.'

§ 189. Fabriciani veneni, 'the attempt to poison through Fabricius.' The genitive depends on *scelere,*—the crime which *consisted in* the Fabricianum venenum. For the collocation, cp. § 164, *Cognoscite nunc id quod ... de criminibus veneni.*

Quod iam tum recens, etc., 'what was at that early date already suspected by everybody else, though to my client inconceivable, now appears,' etc. There is an antithesis between *iam tum* and *nunc vero*: also between *suspiciosum* and *incredibile,* where the chiastic construction should be noted. *Recens* is an adj., with the force, however, of *recenti re,* § 53.

Non est profecto ... celata mater: 'Assuredly his mother was not kept in the dark as to that attempt.' These emphatic words resume the two preceding sentences: *Illud primum queror* and *Quod iam tum recens.* In the latter clause espec-

ially the reference is to the complicity of Sassia, not to the guilt of Fabricius, and I have accordingly introduced a full stop at *Fabriciani veneni,* in order to show that *Quod* is not limited to *venenum.* We are told in § 57 that the guilt of Fabricius was self-evident: there is no word there of any difficulty in crediting it on the part of Cluentius (*huic ... incredibile*). In this passive construction of *celare*, the acc. of the person is made the subject, and instead of the accusative of the thing, *de* with the ablative is employed.

quod si esset = *quod si quid ita cogitatum esset, i.e.* had he laid his plot all by himself, without Sassia's connivance. There is an alternative reading, *quod ni* (*nisi*) *esset*: 'if this had not been so.'

domum ... scelerum omnium adfluentem: 'a house that was a very sink of iniquity,' cp. § 27. The genitive is certainly a less usual construction with *verba abundandi* than the ablative. But cp. *de Or.* ii. § 154, *referta ... Pythagoreorum; ad Att.* viii. 1. 3, *urbem ... refertam ... locupletium*: *Phil.* ii. § 67, *domus ... plena ebriorum*: also Ter. *Adelph.* 765, *omnium rerum satur.* These instances support the view that this genitive is used when speaking of large numbers.

§ 190. pernicie filii, etc., 'the destruction of the son of her bosom.' For the position of *mater*, cp. Verg. *Ecl.* v. 23, *Aen.* viii. 370. So below, § 192.

confirmaret, of 'giving back-bone to': Tr. 'By way of nerving Oppianicus there (*illum*) for the prosecution of her son.'

LXVII. **Ita quod apud ceteros**, lit. 'thus whereas with people in general.' See on § 28, *Ita quod ceteri.* Tr. 'As a general rule ... we see, etc.: but this woman,' etc. The reading *videmus*, which is adopted in the text, (for *vidimus* STF) may be held to derive some support from the present in the next sentence, *ceteri ... deponunt,* which is again contrasted with *illa ... putavit.* *Vidimus* is explained as an instance of the sententious or gnomic perfect, used of that which has been, or shall be. But this usage is mostly confined to poetry, and does not seem so appropriate with *video.* Instances are: Juv. x. 7, *Evertere domos totas optantibus ipsis di faciles*: Hor. *O.* iii. 2. 29, *saepe Diespiter neglectus incesto addidit integrum.*

adfinitatis coniunctionem, 'the bond of a marriage connection.'

§ 191. Neque in eo solum, etc. This sentence resumes *primum* in *Quae primum ut illum confirmaret Oppianicum,* above.

et minis et promissis. Cp. *et spe et metu*, § 176.

non mulieris modus, *i.e.* not by any moderation on her part. Sassia was not the sort of person to know when she had 'gone far enough.' For *modus* cp. on § 96: Tac. *Dial.* 40, *nullus magistratuum modus.*

falsae conscriptiones quaestionum: the forged depositions.

conscelerata: a very strong word. Cp. *nefarium et consceleratum vultum*, § 29: *consceleratae matris*, § 193.

comparatio: the 'presentment' of the indictment. Tr. 'It was she, in a word, who devised and set forth all the materials of this elaborate prosecution.'

§ 192. accusatorem filio suo. The recurrence of this phrase four times in close context suggested to Dr. Reid that we ought certainly here to read, *fili sui*,—possibly also in §§ 190, 191. There may be some point, however, in the repetition of the dative, as indicating hostility.

mater, emphatic by position, as § 190. Tr. 'A sight so dear to her mother's heart,—my client's garb of mourning, and his woeful unkempt appearance.' Cp. § 18, *squalore huius et sordibus laetatur.*

LXVIII. **Aquinum** and **Fabrateria** were towns in the S.E. of Latium, not far from Cicero's birth-place, Arpinum.

quod ... audivi, I have heard of it. This use of *audio* is especially frequent in Tacitus: see on *Dial.* 7.

genitus, 'hootings.'

Mulierem quandam Larino ... proficisci. This sentence is generally taken as furnishing an example of the accusative and infinitive of 'indignant exclamation': cp. the scene presented in indignation and scorn to the imagination of the orator's hearers, *Verr.* 5 § 100, *O spectaculum miserum! ... in portu Syracusano de classe populi Romani triumphum agere piratam!* (Roby, § 1358).

A remark by the reviewer of my Translation in the *Journal of Education* has suggested to me the emendation which I have presumed to introduce into the text. *Quandam*, the reviewer says, is "sufficient to show that we have here the remarks of the onlookers reported obliquely." It is certainly difficult to find a place for *quandam* in any such rendering as, "The idea of a lady of Larinum setting out!" The clause beginning *atque illam* must surely, as Madvig points out (*Adv.* ii. 101), have subjoined some particular attribute of *mulierem Larino.* Unless we can put a stop at *Larino*, and construe it (without a verb) like *Teano Apulo atque Luceria equites Romanos ... videtis* (cp. § 36, *Fuit Avillius quidam Larino*), we may

well suppose that an infinitive has dropped out, and having regard to what follows in *atque illam*, I have ventured to propose *adesse*: cp. *Larino ... advolavit*, § 18. The translation will then be, 'Here is a woman from Larinum; and she is on her way from the *mare superum* to Rome ... in order to be able,' etc. *Possit*, which has much manuscript support, follows as a matter of course instead of *posset*.

Mr. Fausset adopts Müller's conjecture, *Mulierem quandam Larinatem illim usque a mari supero ... quo facilius ... posset*. But to say nothing of the difficulty involved in *quandam*, and the MS. authority for *Larino*, the juxtaposition of *illim usque a mari supero* is awkward: and *posset*, with *proficisci*, is hard to construe. For *Larino—Larinas* cp. § 36.

§ **193. paene dicam**, future: see on *quod timide dicam*, § 51. So *vere dicam, iudices, Sest.* § 22, cp. *de Or.* ii § 15: *Planc.* § 64.

consistendi potestas: 'there was not a single town in which she was permitted to make a halt.' A slightly different use of *consistere* occurs in § 108, *consistere in dicendo*, of 'commanding a hearing.' The idea common to both is that of 'standing one's ground,' 'getting a foot-hold.' Sassia was made to 'move on.'

ex tot hospitibus. Not of Sassia's 'guest friends' the *amici et hospites* of § 176: the context here shows that the reference is to inns and inn-keepers (cp. *hominem multorum hospitem*, § 163). Tr. "There was not a hostelry of all the many upon that road where the host did not run to avoid her baleful glance."

§ **194. nostrum.** All MSS. but two have *nostrorum*, a form which, while characteristic of earlier Latin, is not likely to have been used by Cicero here. This is a case where MS. authority (depending possibly on some minute contraction) cannot be accepted as weighing against established usage.

appellarit. So § 71, *ut ceteros appellet quibuscum loqui consuesset*, of 'approaching,' or 'making overtures to' any-one. For a different use, cp. on § 18.

occultiora: 'a deep secret.' For this 'absolute' comparative cp. on *alienior*, § 162.

furorem atque crudelitatem: 'insensate rancour,' 'rancorous frenzy.'

LXIX. § **195. quosdam alios deos.** Commentators do not seem to have observed that *deos* in this sentence cannot be disconnected from the same word in the preceding sentence. Halm's emendation *quasi aliquos deos*, accepted by Müller and

Fausset, is intelligible enough, and might be adopted if it did not involve, so to speak, a new point of departure. But the MS *alios* is undoubtedly right: other gods—different, that is to say, from the *di immortales* of the preceding sentence. It might even stand alone, but the occurrence of *quos* in T (*quos alios deos*)—if it be not simply a dittography on *quos huic Cluentio*—seems to point to the emendation of Lambinus *quosdam*, for which it may have stood in some contracted form such as *quosd deos*. I have accordingly, with Classen and Ramsay, received *quosdam* into the text.[1] For this use of *quidam*, to soften a figurative expression, cp. § 96, *ruina quaedam atque tempestas*. Dr. Reid's suggestion *quasi alteros deos* would be acceptable enough if it were not for the occurrence of *alios* in the MSS.: cp. *pro Milone*, § 102, *parentem alterum*: *Verr.* iv. 17, *altera patria*.

huius importunitatem matris: 'this monster of a mother.' See on § 12: and cp. § 177.

misericordiae concesserunt, *i.e.* have pardoned the offences of children out of compassion for their parents. Fausset compares *Prov. Cons.* § 44, *me dolorem et inimicitias meas rei publicae concessisse*, 'have waived in consideration of the public interest.'

condonetis, 'sacrifice': §§ 109, 201.

ex altera parte: cp. *ex contraria parte*, § 7.

in tanto eius periculo, 'in his great hour of need.'

sublevarent: so *condemnaretur*, § 148, *adferret*, § 168.

idque in praesentia [communi Italiae pace] in domesticis copiis esse totum: 'and that at this moment it is wholly in the keeping of the forces of the hearth and home.' This reading has the merit of adhering to the unanimous tradition of the MSS., except that I have ventured to reject *communi Italiae pace* as a gloss. The *domesticae copiae* are obviously, as Ramsay points out, the women and children, who are again referred to, by a hyperbole, in the next sentence, *Quos tamen ipsos*, etc., though not to the exclusion of those Larinates who had *not* been able to make the journey to Rome (cp. above, *omnes Larinates qui valuerunt venisse Romam*). —Madvig's reading, generally adopted by edd., is *idque in praesentia communi Italiae pace non domesticis copiis esse tutum*: 'and that at this moment it is guarded, not by its home forces, but by the general peace which prevails in Italy.' This seems,

[1] Since the above was written, I have noted that this reading occurs in one of the British Museum MSS. Arund. 236. This codex also omits *communi Italiae pace*, as I propose to do, at the end of this section.

however, to produce a false antithesis, besides transferring *domesticae copiae* from those who had been left behind at Larinum to those who had gone to Rome. It is difficult to account for *communi Italiae pace* except on the supposition that it was added by some one who wished to detract from the force of Cicero's argument. For *domesticae copiae*, cp. *de Or.* ii. § 38, *nisi domesticis se instruxerit copiis,* and the common antithesis in *domi bellique. domesticus ... bellicus, Acad.* i. § 9, *Brut.* § 49.

in praesentia: see on § 10.

aeque et eos. *Et* occurs here (for the more usual *aeque ac*) because *ac* is not admissible before a vowel.

§ 196. commodisque. For *que* in the last item of an enumeration, see on § 166: so *pudorem, veritatem, virtutemque* § 200.

in ... rem diligentia, *i.e.* devotion to the public good.

eis ... verbis ... ut, *i.e.* in language so chosen as to express, etc.

publice, 'in the name of the community': § 43.

curam animi ac dolorem, 'heartfelt concern and solicitude,' 'sympathy.'

laudatio, 'testimonial': cp. *laudatoribus*, § 56.

vos, quaeso, adsurgite. *Quaeso* is here obviously parenthetical: see on §§ 66, 112. Here followed the *laudatio*, or witness to his character by the fellow townsmen of Cluentius. For these *laudationes*, cp. note on § 56.

§ 197. Ex lacrimis horum ... lacrimantes. The southern temperament is such that even to-day deputies weep in the Italian Chamber on occasions which lead to a display of emotion: *e.g.* the statement made by Signor Crispi in his own defence, December, 1897.

decuriones: § 41.

Age vero: see on § 82.

quanta cura: 'what real concern'!

in libellis: 'in writing.' Nägelsbach[8], p. 205, compares *de Or.* i. § 157, *rationem quae in arte traditur*, 'in the form of a system,' and defends also the disputed reading in *ad Fam.* i. 9, § 23, *scripsi tres libros in disputatione ac dialogo de oratore.*

quos nossemus omnes, lit. 'such as we should all know.'

frequentes: see on § 49.

Frentani: the Samnite tribe in whose territory Larinum lay. They inhabited a strip of country along the shore of

the Adriatic, south of the *Marrucini*, who are named next. Others read *Ferentani*: 'men of Ferentum' (or Forentum, Hor. *Od.* iii. 4, 16),a town in Apulia, whose name survives in the modern village of Forenza.

Teano Apulo: § 27.

Luceria, in N. Apulia, due south of Teanum.

Boviano. Bovianum was the chief town of Samnium.

§ 198. praedia ... negotia ... res pecuarias: 'landed property,' 'business interests,' 'grazing stock.' The MSS. have *res pecuniarias*, but Samnium was famous for its pasturage. Cp. *pro Quint.* § 12, *erat ei pecuaria res ampla.*

summo splendore praediti, as we might say, 'most illustrious.' For *splendor*, see on § 46.

ab eis universis. I prefer the form *eis* (*iis*) here on the ground that scribes more frequently made the change from *iis* to *his* than *vice versa.* See Lindsay's *Latin Textual Emendation*, p. 22. Cp. *eae-hae* § 12, *eius-huius* § 118.

LXX. **Quam doleo**, etc. The reading adopted in the text is due to Classen. For *Quam doleo* the codd. give *Quando*, for which *Quam non* was substituted in early editions, making the sentence end at *vellem*, and repeating *Quam vellem* before *praesentem*, with *posse* for *possem.*

equitem Romanum omnium ornatissimum: lit. 'a Roman knight the most distinguished of all': tr. 'second to none in distinguished standing,' or 'that bright particular star of our Roman knighthood.' Cp. *omnibus rebus ornati*, § 176, 'with every honourable recommendation.'

doceret, 'was instructing me in.'

capite: see on § 20.

maiore verecundia, 'with greater reserve.'

in A. Cluentium. For this accusative cp. § 105, *sedissentne iudices in C. Fabricium* (κατὰ c. gen.) and such phrases as *in hanc rem arbiter*, etc.

ne longum sit. See on *longum est*, § 36: cp. § 107.

§ 199. totam hanc causam vetere instituto solus peroravi: 'I have pleaded this case from beginning to end single-handed, according to ancient practice.' It was usual in the earlier days of forensic pleading at Rome for only one counsel to be employed in a case: later a defendant seems to have been able to retain as many as he pleased. Cp. *Brut.* § 207, *neque hoc quod nunc fit ut causae singulae defenderentur a pluribus, quo nihil est vitiosius: de Or.* ii. § 313. For *vetere instituto* cp. *vetus disciplina*, §§ 76, 107, 129: Mr. Fausset compares also

Cael. 73. *Perorare* here = to plead throughout: for the meaning to 'finish pleading,' see on § 6. *Vetere instituto* has been rendered, "according to my old custom" (§ 144), but this is not so probable.

caecam crudelitate et scelere ferri: 'carried along in all the blindness of inhumanity and sin.' For *ferri*, cp. on § 12.

vitiis animi, abl. of instrument. Tr. 'In the depravity of her mind she has dragged in the dust all the binding ordinances of society.' *Iura hominum* includes the perversion of relationships stigmatized below, but has probably a more extended meaning.

hominem, 'a human being,' without reference to sex, as often ἄνθρωπος.

nomina necessitudinum, 'the designations of relationship,'—artificial as contrasted with *naturae nomen et iura*, for which cp. *naturae nomen*, § 12.

filiae pelex: 'the mistress of her daughter's husband.'

ad similitudinem hominis, 'in the likeness of humanity.' Fausset here compares, wrongly as I think, *ad fraudem callidi*, § 183. *Ad* in this passage = κατὰ rather than εἰς, and means 'in accordance with': cp. *ad normam, ad hunc modum*, Roby, 1826.

§ 200. liberum, a vague plural, as in § 31.

Sin autem, formally adversative to *si scelus odistis*, above. 'And again, by your love of,' etc. For *postulat* cp. § 66, *fautore ... cupidiore quam fides iudicis postulabat.*

aliquando, with *levate*: 'raise at length from the ground the suppliant now before you.'

in falsa invidia periculisque, 'groundless prejudice and peril.' Cp. *de communibus invidiae periculis*, § 8.

post illam flammam, *sc. invidiae*: cp. § 4, *quasi in aliqua perniciosissima flamma.*

aliorum facto et cupiditate, 'the villainy and avarice of others.' Ernesti's conjecture, *fraude* for *facto* is unnecessary: a word like *factum* is apt to acquire an evil sense from the context in which it occurs. Cp. *non de illorum facto*, § 118.

cui posita sunt in vobis omnia: 'his all is in your hands.' Cp. § 146, *mens ... civitatis posita est in legibus.*

servatum esse ... cupiunt. See on *interfectum cupit*, § 12.

§ 201. in iudiciis valere non debet: cp. § 5, *in hoc loco falsa invidia imbecilla esse debet.*

LXXI. **Quod si qua calamitas etc.** *Calamitas* is the disaster of a conviction, loss of *caput*. Its opposite is *salus, incolumitas.*

ne iste miser, 'then verily in his wretchedness.' *Iste* here expresses sympathy.

illud Fabricianum venenum, as at § 189. For the attempt to poison through Fabricius, see § 46 *sq.* : Introd. p. xiv.

laborum. This is the reading of the MSS.: for *labor* in this sense cp. *Arch.* § 30, *in his vitae laboribus versari, Rab. Post.* § 29, *tantis in laboribus periculisque vixisset.* I see no reason, therefore, for rejecting *laborum* in favour of *maerorum,* which editors have adopted in accordance with a suggestion of Baiter, contained in the following note: *Incerti art. gramm. fragm.,* § 149, "*maeror, λύπη.* Cicero *pluraliter extulit in pro Cluentio :* sed multorum medicamentum maerorum" (*Anall. Gramm.* ed. *Eichenf. et Endl.*, p. 102).

fortasse. For the form see on § 144.

exsequias illius funeris prosecuta, 'following in his funeral train.'

mortis insidiis : cp. *poculo mortis,* § 31.

nisi ut huius ... mors sepulcro patris privata esse videatur : 'only that in death he may be robbed of the sepulchre of his fathers.' Cp. the fragment of *pro Rab. Perd.* xiii. 37, *neque tam ut domo sua fruatur quam ne patrio sepulchro privetur laborat,* where Mr. Heitland refers also to *pro Sulla,* § 89. For the antithesis *mors ... vita,* cp. *Sest.* § 83, *Eius igitur* vitam *quisquam spoliandam ornamentis esse dicet cuius mortem ornandam monumento sempiterus putaretis?* : *Mil.* § 86.

§ 202. iniquus ... aequi : 'unfair ... fair.'

conservate, of civil status, as frequently in Cicero's perorations, *e.g. Planc.* § 104.

vestrae dignitatis, vestrae clementiae : 'it belongs to,' *or* 'is incumbent on your honour and your clemency.' So *vestri auxilii est,* § 4, where see note.

in contionibus esse invidiae locum, in iudiciis veritati. The speech ends in the keynote of § 5.

INDEX TO TEXT AND NOTES.

GLASGOW: PRINTED AT THE UNIVERSITY PRESS BY ROBERT MACLEHOSE AND CO.